

# Federal Register

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Part XVIII

## Department of Energy

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Office of Minority Economic Impact

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Loans for Bid or Proposal Preparation by  
Minority Business Enterprises Seeking  
DOE Contracts and Assistance; Proposed  
Rulemaking

**DEPARTMENT OF ENERGY****Office of Minority Economic Impact****10 CFR Part 800****Loans for Bid or Proposal Preparation by Minority Business Enterprises Seeking DOE Contracts and Assistance; Proposed Rulemaking and Request for Written Comments****AGENCY:** Department of Energy.**ACTION:** Proposed rule.

**SUMMARY:** The National Energy Conservation Act, Pub. L. 95-619 dated November 9, 1978, which amended the Department of Energy Organization Act (Pub. L. 95-91) of August 4, 1977 by adding Section 211 establishing the Office of Minority Economic Impact authorized the Department of Energy (DOE) to provide financial assistance in the form of loans to minority business enterprises to assist such enterprises in participating fully in research, development and demonstration efforts acquired or supported with financial assistance by the Department of Energy. This notice sets forth, as a proposal, rules under which DOE will provide loans for bid or proposal preparation by minority business enterprises seeking DOE contracts and assistance, and requests public comments on the proposed rule.

**DATES:** Written comments in response to this notice are requested on or before March 20, 1981.

**ADDRESSES:** Submit comments to: Juventino Rodriguez, Director, Assistance Programs Staff, Office of Minority Economic Impact, Mail Stop 5B-110, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 252-8383.

**FOR FURTHER INFORMATION CONTACT:**

James Hirahara, Office of Financial Incentives, Mail Stop 1J-009, 1000 Independence Avenue, S.W., Washington, D.C. 20582, (202) 252-1426.

George Samels, Office of General Counsel, Mail Stop 4A-139, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 252-6967.

**SUPPLEMENTARY INFORMATION:**

- I. Background
- II. Discussion of the Proposed Rule
  - A. General
  - B. Requirements
  - C. Qualification Process for Loans
  - D. Loan Application
  - E. Loan Administration
- III. Period for Public Comment
- IV. Comment Procedures

**I. Background**

The Act provides authority for DOE to provide direct loans to minority business enterprises for bid or proposal preparation under such rules as the Secretary of Energy, acting through the Office of Minority Economic Impact, may prescribe. Such loans to any recipient may not exceed 75 percent of bid or proposal costs. This proposal is the first rule promulgated by DOE to implement Section 211 of the Act and concerns direct loans only.

**II. Discussion of the Proposed Rule**

This proposal, which sets forth the guidelines and procedures to be used for the Office of Minority Economic Impact loan program, consists of five subparts as follows:

**A. General**

*Subpart A* of the proposed rule provides general information relative to the loan program and defines the parameters within which loan requests will be considered. Though comments are desired relative to any aspect of the proposed rules, comments are especially sought in the following areas of this subpart:

*Subsection 800.006* attempts to illustrate eligible and ineligible costs. Comments are requested from prospective applicants concerning the list of eligible and ineligible costs and whether any such includable or excludable costs pose significant problems for the loan contemplated.

*Subsection 800.007* identifies DOE or other Federal Agency as being responsible for loan servicing but reserves the right for DOE to contract out for such services. Comments are requested from prospective applicants concerning the desirability of contracting out for such services. In addition, comments are requested from prospective minority enterprises or other servicing agents who may be interested in providing loan servicing functions in connection with this program. DOE is considering such interested parties in an effort to foster working business relations between minority business enterprises and financial services firms, particularly commercial banks.

**B. Requirements**

*Subpart B* of the proposed rule contains the general guidelines for selection of loan applications, requirements and conditions of the loan agreement, and findings and determinations which will have to be made by DOE relative to any loan application.

*Subsection 800.100*, which contains the guidelines for Selection of Loan Applications, contemplates a two-step process. The first step will involve submission of an application to establish the applicant as a viable, qualified minority business enterprise. The second step will involve submission of an application for a specific loan request. The two-step process is introduced in recognition of the fact that a timely response to a loan request is essential relative to competitive solicitations because of firmly established submission dates. The two-step approach will permit a thorough evaluation during the first step. The second step, with reliance on the evaluation already completed in the first step, would focus on the specifics of a loan request and makes possible a timely decision by DOE.

*Subsection 800.101*, which contains requirements and conditions for loan agreements, is a particularly important section of the regulation for the public to review because it describes the proposed structure of the loan, including collateral, repayment, maturity, interest, and disbursement provisions. DOE intends to provide loans on favorable terms to assist minority business enterprises in participating fully in research, development and demonstration activities of the Department. Particular comments are requested from prospective applicants concerning the classification of different maturities depending on amounts of money borrowed, and whether the proposed schedule of maturities appears excessive in length.

**C. Qualification Process for Loans**

*Subpart C* provides detailed guidelines for the first step of the two-step process described in *Subpart B*. The qualification process includes (1) submission of an application containing information set forth in § 800.201, (2) evaluation of applications in accordance with the criteria contained in § 800.202, and (3) approval for qualification. Once an applicant is found to be qualified, such finding will be relied on by DOE in reviewing applications for direct loans. Though applicants are encouraged to follow the two-step qualification/loan application process, provisions are made for the simultaneous submission and review of qualification and loan applications.

**D. Loan Application**

*Subpart D* provides detailed guidelines for the second step of the two-step process described in *Subpart B*. In order to expedite closing of approved loans, DOE is developing a

"form of loan agreement" referenced in § 800.300. It is planned that the form will serve a dual purpose of (1) an application submission form to be signed by the applicant and (2) a loan agreement when and if it is approved and signed by the Contracting Officer. At this time, a final form has not been developed and comments on the planned approach are requested.

#### E. Loan Administration

Subsections 800.400, Loan Servicing Agent, and § 800.401 Loan Servicing Responsibilities (of a designated loan servicing agent) will be applicable if DOE decides to use the loan servicing agent approach. Otherwise, the DOE or other Federal agency will service the loans. As noted in the earlier discussion of the proposed rule relating to § 800.007, comments and expressions of interest from prospective loan servicing agents are requested.

#### III. Period for Public Comment

A 60-day period is being provided for public review and comment on this proposed rule-making.

#### IV. Procedures for Comment

Interested persons are invited to participate in this rulemaking by submitting data, views or arguments with respect to today's rule. Comments should be submitted by March 20, 1981, to the address indicated in the beginning of the preamble. Comments should be identified on the outside of the envelope and on documents submitted to DOE with the designation "OMEI Loan Program". Ten copies should be submitted. All comments received will be available for public inspection in the DOE Reading Room, Room 1E-190, Forrestal Building, 1000 Independence Avenue, S.W., between 8:00 a.m. and 4:00 p.m., Monday through Friday.

Pursuant to the provisions of 10 CFR 1004.11, any person submitting information which he or she believes to be confidential and exempt by law from public disclosure should submit one complete copy, and fifteen copies from which information claimed to be confidential has been deleted. In accordance with the procedures established in 10 CFR 1004.11, DOE shall make its own determination with regard to any claim that information submitted be exempt from public disclosure.

In consideration of the foregoing, DOE hereby proposes to amend Chapter II of Title 10, Code of Federal Regulations, by establishing Part 800 as set forth below.

Issued in Washington, D.C., January 12, 1981.

Louis F. Moret,

Director, Office of Minority Economic Impact.

### PART 800—LOANS FOR BID OR PROPOSAL PREPARATION BY MINORITY BUSINESS ENTERPRISE SEEKING DOE CONTRACTS AND ASSISTANCE

#### Subpart A—General

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#### Subpart B—Requirements

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800.402	Reduction or withdrawal of loan.
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800.405	Default.

Authority: Section 211(e) of the Department of Energy (DOE) Organization Act, Pub. L. 95-91, Title II, as amended by Pub. L. 95-619, Title VI, Section 641, November 9, 1978, 92 Stat. 3284, Codified at 42 U.S.C.A. 7141.

#### Subpart A—General

##### § 800.001 Purpose.

The purpose of this regulation is to set forth policies and procedures for the award and administration of financial assistance in the form of loans to minority business enterprises to assist such enterprises in participating fully in research, development, and demonstration activities of the Department of Energy, and demonstration activities of the Department of Energy. Issuance of direct loans under this regulation is limited to the extent funds are provided in advance in appropriation acts. This regulation implements the authority for

providing such loans as contained in Section 211(e) of the Department of Energy (DOE) Organization Act, Pub. L. 95-91, Title II, as amended by Pub. L. 95-619, Title VI, § 641, November 9, 1978, 92 Stat. 3284, Codified at 42 U.S.C.A. 7141.

##### § 800.001 Definitions.

For the purpose of this regulation: "Act" means the National Energy Conservation Policy Act, Pub. L. 95-619, amending Title II of Pub. L. 95-91, the Department of Energy (DOE) Organization Act.

"Applicant" means an eligible minority business enterprise which is seeking a loan under this regulation.

"Application Approving Official" means the Director of the Office of Minority Economic Impact.

"Application Evaluation Panel" (Also referred to as "the Panel") means a team of Federal employees appointed by the Application Approving Official to evaluate loan applications and make approval or disapproval recommendations regarding such applications.

"Bid or Proposal Costs" means the costs incurred in preparing, submitting and supporting bids or proposals, whether solicited or not, for DOE business.

"Borrower" means an applicant who enters into a loan agreement with DOE.

"Contracting Officer" means the DOE official warranted and authorized to contractually bind the Department of Energy and execute written agreements that are binding on the Department.

"Default" means the actual failure by the borrower to make payment of principal or interest in accordance with the terms and conditions of a loan issued under this regulation, or the failure of the borrower to meet other requirements specified as a default condition in the loan agreement.

"Director" means the Director of the Office of Minority Economic Impact (OMEI).

"Loan", in reference to a loan made pursuant to this regulation, means a transaction in which a contractual instrument ("loan agreement") is executed between the United States, as lender, acting through the Secretary of Energy, and a borrower. The instrument must obligate the United States to provide the borrower with a specified amount(s) of United States funds for a specified period and must obligate the borrower to use the moneys to bid for and attempt to obtain contracts and other agreements relating to DOE research, development, demonstration and contract activities, and to repay the moneys at a specified time(s) at a specified rate(s) of interest. The words

"loan", "loan agreement" and "transaction" include (where the context does not require otherwise) the terms and conditions of related documents, such as the borrower's note or bond or other evidence of, or security for, the borrower's indebtedness.

"Minority Business Enterprise (MBE)" means a firm, corporation, association, or partnership which is at least 50 percent owned or controlled by a member of a minority or group of members of a minority. For the purpose of this definition, "control" means direct or indirect possession of the power to direct, or cause the direction of, management and policies, whether through the ownership of voting securities, by contract or otherwise.

"Minority": an individual who is a citizen of the United States and who is a Negro, Puerto Rican, American Indian, Eskimo, Oriental, or Aleut, or is a Spanish speaking individual of Spanish descent, is a member of a "minority" as used in this regulation.

"Operating Contractors" means contractors under DOE prime contracts:

(a) For the management of Government-owned laboratories, production plants, and research facilities located on Government-owned or leased sites, where the programs being conducted are considered of a long-term, continuing nature; or

(b) For the operation of Government-owned facilities located on contractor-owned or leased sites where the programs being conducted are of a long-term, continuing nature. An example of this category would be those contracts with universities for the operation of Government-owned laboratories and facilities, located on university-owned sites, for the purpose of conducting long-term basic research programs.

"Secretary" means the Secretary of the Department of Energy or his delegate.

#### § 800.003 Program management.

Program management responsibility for financial assistance awarded under this regulation has been assigned to the office of Minority Economic Impact.

#### § 800.004 Financial assistance—General.

Assistance under this regulation is available to eligible enterprises, as defined in § 800.005, in the form of direct loans. Assistance is limited to providing loans to cover allowable costs incurred by such enterprises to prepare bids or proposals for contracts or other agreements including subcontracts with DOE Operating Contractors in order to participate fully in research, development, demonstration, and contract activities of the Department of

Energy. Loans will be repayable regardless of whether borrowers are successful or unsuccessful in receiving awards pursuant to the bids or proposals developed with loan proceeds. Additionally, the amount of financial assistance to any recipient is limited to not more than 75 percent of allowable bid or proposal preparation costs.

#### § 800.005 Eligibility.

In order to be eligible for a loan, an applicant must:

(a) Be a minority business enterprise, as defined in § 800.002,

(b) Be a citizen or a national of the United States. A national includes a person who, though not a citizen of the United States, owes permanent allegiance to the United States.

#### § 800.006 Allowable costs.

(a) Except as provided in paragraph (b), of this section, those reasonable and customary costs that have been incurred, or are expected to be incurred, and which are directly related to bid or proposal preparation necessary to obtain a DOE contract or agreement or subcontract with DOE Operating Contractors shall be allowable costs for purposes of this regulation. In determining whether costs are directly related to bid or proposal preparation, a strict standard will be applied since the purpose of this program is to encourage bid or proposal preparation rather than to finance engineering feasibility studies or like activity which have broader application than a particular bid or proposal. Examples of allowable costs may include, but are not limited to the following:

- (1) Bid bond premiums,
- (2) Financial, accounting and legal services costs,
- (3) Professional services and fees associated with preparing an application or proposal,
- (4) Printing and reproduction costs associated with preparing an application or proposal,
- (5) Other necessary and reasonable costs as determined by the Secretary.

(b) Costs that are not considered as allowable costs include the following:

- (1) Fees and commissions charged to the borrower, including finders fees, for obtaining Federal funds,
- (2) Expenses not paid or incurred by the applicant, and
- (3) Costs that are excessive or are not directly required to prepare a bid or proposal as determined by the Secretary.

(c) The Secretary shall have the right to audit any or all cost elements included in the estimated bid and

proposal cost, or for which loan proceeds are used and reserves the right to exclude or reduce the amount of any cost which the Secretary determines to be unnecessary or excessive. The borrower will make available records and other data necessary to permit the Secretary to carry out such an audit. In carrying out this responsibility, the Secretary may utilize employees of other Federal agencies or may direct the borrower to submit to a review performed by an independent public accountant or other competent authority.

#### § 800.007 Loan Servicing.

The servicing of loans awarded by DOE under these regulations will be performed by DOE or by another Federal agency. However, DOE reserves the right to contract for such services. If the DOE chooses to contract out for such services, the servicing entity will be designated by DOE. Preference will be given to minority enterprises or other servicing agents with established records of providing minority firms with financial services. Loan servicing, if contracted out, would include but not be limited to functions listed in § 800.401.

#### § 800.008 Deviations and Contract Modifications.

(a) To the extent that such requirements are not specified by the Act, relevant Appropriations Acts, or in other applicable statutes, the Director, OMEI, may deviate on an individual application basis from the requirements of this regulation upon a finding endorsed by the Contracting Officer that a deviation is necessary and warranted in the individual case to the accomplishment of program objectives and unique circumstances in the loan application make a deviation clearly in the best interest of the Government.

(b) The Contracting Officer may, subject to approval or agreement by other necessary parties, modify or amend the terms and conditions in a loan agreement, collateral agreements, or other documents provided that such modifications will not deviate from provisions in this regulation.

#### Subpart B—Requirements

##### § 800.100 Guidelines for Selection of Loan Applications.

(a) *General.* Interested applicants will be evaluated in a two-step process. The first step will involve submission of an application to establish the applicant as a viable, qualified minority business enterprise with an interest in seeking direct loans to become involved in DOE procurement or assistance activities as contemplated by this regulation. The

second step will involve submission of an application for a specific loan involving preparation costs for one or more known bids or proposals. The two-step process makes possible a timely decision by DOE on a loan request, which is essential relative to competitive solicitations because of firmly established submission dates. DOE prefers that an applicant comply with the two-step procedure. However, applicants may, at their option, submit qualification and loan applications simultaneously.

(b) *Application Process.* The application process will consist of the following:

- (1) The continuing solicitation of applications as described in this regulation or otherwise as provided in paragraph (c) of this section;
- (2) Submission of an application for qualification which complies with § 800.201 of this regulation;
- (3) Preliminary review and screening of applications;
- (4) Clarification discussions, as required;
- (5) Evaluation;
- (6) Selection of applications from applicants considered eligible and qualified for receiving loans under this program;
- (7) Submission of a loan application which complies with §§ 800.300 and 800.301 of this regulation;
- (8) Evaluation of loan application;
- (9) Loan approval and award.

(c) *Solicitation Announcement.* The Secretary will periodically, normally once a year, issue a solicitation announcement which shall at a minimum be published in the Federal Register and synopsized in the Commerce Business Daily. A Solicitation Announcement will provide more detailed information as to funds availability, application instructions, and any applicable restrictions. The Solicitation Announcement will indicate some or all of (but will not be limited to) the following as applicable:

- (1) Identification of statutory authority and relevant regulations;
- (2) Any special requirements or constraints applicable;
- (3) Location(s) to which application must be submitted;
- (4) General qualification criteria;
- (5) Interest rates, maturities, and other key loan terms;
- (6) The extent to which appropriations are currently available for direct loans.

**§ 800.101 Loan Agreement requirements and conditions.**

A loan may be made pursuant to this regulation only if the loan agreement contains provisions satisfactory to the

Secretary and which meet the following requirements:

- (a) All financial and legal documentation necessary to close the lending transaction are satisfactory to the Secretary in both form and content;
- (b) DOE may require the applicant to pledge collateral as security for the loan. Security or collateral agreements will be required if the value of a single loan is greater than \$25,000, or if the value of loans outstanding will exceed \$25,000 in the aggregate. DOE will require property insurance on tangible assets, including real property pledged to secure a loan, with DOE shown as the loss payee under such policies;
- (c) The orderly repayment of the loan in accordance with loan size and maturity shall be a provision of the loan agreement.
- (d) Repayment of principal and interest to begin within 90 days of loan approval. If a single loan is in excess of \$25,000, DOE may defer principal payments for an additional 180 days. Repayment, after any permissible delay or deferment of principal, shall be in equal monthly installments, applied to interest first, then principal, over the period of the loan;
- (e) After repayments begins a period of grace of 60 days from the date the principal or interest payment is due will be allowed;
- (f) Maturity dates will vary depending on the loan value as follows:

*Loan Value and Maximum Repayment Period*

\$0 to \$5,000—3 Year
\$5,000 to \$25,000—5 Year
Excess of \$25,000—8 Year

(g) The rate of interest charged for a loan will be established in consultation with the Secretary of the Treasury. The rates will be the current rates of outstanding government (U.S. Treasury) issues of the same maturity as a particular loan. The rates will be adjusted monthly consistent with Treasury rate fluctuation to reflect change in these costs of borrowing. However, once a loan is approved, the applicable interest rate at the time will be the rate charged over the life of the loan;

(h) For loans under \$10,000, loan funds will be provided in a single disbursement. Over \$10,000, loan funds will be disbursed in increments of not less than \$5,000 in accordance with a schedule matching funds required;

(i) The borrower shall have an option to accelerate payment or to prepay the loan without prepayment penalties;

(j) The borrower shall have appropriate opportunities as determined by DOE to cure any default, failure, or

breach of any of the covenants, conditions and obligations undertaken by the borrower pursuant to the provisions of the loan agreement and other documents relevant to the financing transaction;

(k) The Government shall have the right to accelerate and demand full payment of the entire indebtedness in the event of the occurrence of identifiable occasions of default on the part of the borrower;

(l) The borrower will be required to maintain its legal entity in good standing with applicable federal, state, and local laws and requirements regulating the conduct of its business, including the payment of all taxes, fees and other charges, and the maintenance of all requisite licenses and any other government authorization necessary for the continued operation of the project;

(m) The borrower will be required to return funds disbursed and not used to DOE immediately upon completion of proposal preparation or receipt of notices contemplated by subpart D, § 800.402;

(n) The borrower will be required to permit access to DOE and the Comptroller General or their duly authorized representatives, for the purpose of audit and examination, to any pertinent books, documents, papers, and records related to the loan; and

(o) Such other terms and conditions determined necessary by the Secretary for the protection of the interest of the United States.

**§ 800.102 Findings and Determinations.**

In addition to meeting the requirements set forth in other subparts of this regulations, a loan shall be issued only after the Secretary is satisfied that the following requirements have been met:

(a) The amount of the loan is sufficient to prepare the bid or proposal planned;

(b) There is reasonable assurance of repayment of principal and interest of the loan by the borrower, regardless of whether or not the borrower's bid or proposal is selected by DOE for award;

(c) The loan is for bid and proposal costs of eligible applicants which falls within the purposes and objectives of this regulation;

(d) For any single firm that has received an aggregate of \$100,000 in loan awards in any one year, a specific finding that additional awards to such a firm is in the best interest of the government;

(e) The borrower has met such additional requirements as determined to be reasonable and necessary by the

Secretary for the protection of the interest of the United States;

(f) The borrower has provided evidence satisfactory to DOE that the borrower's share of bid or proposal costs is available.

#### Subpart C—Qualification Process for Loans

##### § 800.200 General.

Applications for Qualification should be filed in accordance with the two-step process described in Subpart B, § 800.100 of this regulation. The application must contain most current data available and be adequate for the Secretary to properly evaluate the applicant's qualifications or loan requests. Applications must contain the information specified in § 800.201. Applications shall be filed with one original and four legible copies to:

Department of Energy  
Washington, D.C. 20565  
Attention: Announcement No. DE-PS60-MI

##### § 800.201 Applications for Qualification.

(a) Each application must contain the following information submitted in a brief but precise manner:

(1) Applicant name and address (this name should be referred to in the application for loan);

(2) Statement of eligibility;

(3) Statement of capability, past experience, and nature of interest in Department of Energy contract or assistance activities;

(4) Financial statements for the past three years of the applicant, or such lesser period as the applicant has been in existence;

(5) A description of the applicant's organization;

(6) A listing of assets which may serve as collateral for the loan;

(7) Credit references;

(8) Such additional information which the applicant may consider pertinent.

(b) Information contained in applications will be received in confidence and will be used only for evaluation purposes except to the extent such information is generally available to the public.

##### § 800.202 Evaluation for Qualification.

(a) Evaluation of applications under this section will be performed by an Application Evaluation Panel (hereinafter referred to as the Panel) which will consider applications as they are received. The Panel will be appointed by the Application Approving Official and is responsible for preliminary review and screening, clarification discussions with applicants, evaluations, and

presentation of its findings and recommendations to the Application Approving Official. The Panel membership will include, at a minimum, representation from the Office of Minority Economic Impact and the Contracting Officer.

(b) Preliminary review and screening of all applications received shall be conducted to determine which applications should be considered for further evaluations. The Panel shall review the applications to determine whether each application:

(1) Complies with eligibility requirements of the Act;

(2) Contains sufficient information to enable the Panel to perform an adequate evaluation; and

(3) Is signed by an authorized official of the applicant organization.

(c) After preliminary review and screening, remaining applications will be subjected to a more thorough evaluation by the Panel. The Panel shall consider the following in the evaluation of applications:

(1) Adequacy of Organization

(i) Corporate and personnel experience,

(ii) Management organization,

(iii) Key personnel,

(iv) Past experience;

(2) Financial Resources.

(i) Adequacy of capitalization, cash flow, working capital, and other financial capability,

(ii) Financial condition of applicant and other principals;

(3) Ability of applicant to comply with requirements of this regulation

The Panel may conduct further discussions with applicants regarding qualifications or make requests for additional information either orally or in writing in order to complete its evaluation.

(d) The Panel shall then present to the Application Approving Official its findings and recommendations in a written report which represents evaluations and judgments prior to final decision making.

##### § 800.203 Approval for Qualification.

(a) The Application Approving Official will consider the findings and recommendations and such other information as the Application Approving Official determines to be relevant pursuant to the provisions of this regulation in selecting applicants considered to be qualified to apply for loans under this program.

(b) Upon a decision by the Application Approving Official, the Application Approving Official shall authorize a Contracting Officer to notify applicants of approval or disapproval.

Applications which have been approved will be assigned a file number and retained by DOE for future reference.

(c) Annual updates will be required for each applicant found to be qualified. Review procedures will be the same as those followed for a new Application for Qualification. The Application Approving Official will have the right to cancel an applicant's qualification status due to adverse changes in data upon which prior qualification was determined.

#### Subpart D—Loan Application

##### § 800.300 Submission.

(a) Applications for loans should be accompanied by all documentation necessary for closing including a form of loan agreement to be made available by DOE and collateral agreements if required. In order to expedite closing of approved loans, a loan will be closed by executing a form of loan agreement provided to the applicant by DOE which will also be used as an application submission form.

(b) Applications should be submitted to the address identified in § 800.200, with one original and four legible signed copies.

##### § 800.301 Applications for Loans.

(a) Applications for loans must contain the information listed below. Applications must be submitted in prescribed forms:

(1) Applicant name and address

(2) Applicant File Number

(3) Summary of the award being sought through bid or proposal including:

(i) Title

(ii) Brief description of work

(iii) Sponsoring DOE office, including solicitation number, if any. If an unsolicited proposal is planned, an application should include sufficient information to indicate applicant has consulted with DOE program personnel, and the potential for the proposal to be supported exists.

(iv) Type of award (competitive, set-asides pursuant to Section 8(a) of the Small Business Act, unsolicited proposal) and schedule for proposal preparation and submission.

(4) Requested loan amount, not to exceed 75 percent total bid and proposal costs, requested loan maturity, detailed disbursement schedule (e.g. labor, reproduction costs, professional fees, etc.), deferrals.

(5) Loan servicing agent, if previously designated by DOE, in accordance with § 800.007.

(6) Notification of any changes to information provided in the Application for Qualification.

(7) List total outstanding debt and maturity of debt.

**§ 800.302 Evaluation.**

(a) The evaluation of applications for specific loans will be performed by an Application Evaluation Panel designated by the Application Approving Official and written findings and recommendations will be provided to the Application Approving Official or designee. The process of evaluating applications for specific loans is intended to be very brief, with acceptance of and reliance upon findings previously made during the Qualification Process in Subpart C of this regulation. Because of established submission dates which exist in competitive solicitations, priority will be given to considering applications for loans to prepare bids and proposals being submitted in response to competitive solicitations. In the case of a proposal to be prepared in response to a competitive solicitation, the Panel may defer action until five days after the solicitation has been announced in the Commerce Business Daily to provide all interested and qualified firms an opportunity to apply for loans.

(b) The factors to be considered in the evaluation of a loan application include the following:

(1) Compliance with the requirements set forth in § 800.102 of this regulation.

(2) Reasonableness of the estimated cost of preparing a bid or proposal relative to the goods or services to be supplied.

(3) Likelihood of being a successful offeror. Normally, *not more than three loans* for a single anticipated competitive award will be approved.

(4) Optimum utilization of remaining program funds available for loans.

(5) The need for the loan to permit the applicant to participate in research, development, demonstration, and contract activities of DOE.

(c) The Panel shall present to the Application Approving Official its findings and recommendations in a written report which represents evaluations and judgments prior to final decision making.

**§ 800.303 Approval of Loans.**

(a) The Application Approving Official will consider the findings and recommendations and such other information as the Application Approving Official determines to be relevant pursuant to the provisions of this regulation in selecting successful loan applicants.

(b) Upon a decision by the Application Approving Official, the Application Approving Official shall authorize a Contracting Officer to notify applicants of approval or disapproval. The Contracting Officer will be responsible for executing all instruments necessary for the loan.

(c) Non-written Representations. No representation or modifications thereof shall be binding on the Department of Energy unless made in writing and approved by a Contracting Officer.

**§ 800.304 Closing and Award.**

Loan closing will occur when a mutually acceptable loan agreement, supported by necessary documentation, has been executed by the parties.

**Subpart E—Loan Administration**

**§ 800.400 Loan servicing agent.**

In the event that DOE elects to contract out the loan servicing functions, applicants may be required to conduct loan transactions through a servicing agent designated by DOE to administer the loan. Servicing agents may include commercial banks, brokers, financial institutions, etc., qualified to exercise diligence in the disbursement, servicing, and collection of the loan.

**§ 800.401 Loan servicing responsibilities.**

(a) The designated loan servicing agent will service the loan in accordance with these regulations, and the terms and conditions of the loan. In this regard, the servicing agent is generally expected to undertake those servicing responsibilities that a reasonable and prudent lender would undertake in a similar transaction under a commercial loan. It is anticipated that specific responsibilities relative to a loan, which would otherwise be performed by DOE, will include:

(1) Loan disbursements as set forth in the loan agreement.

(2) Collection of principal and interest payments on a monthly basis for forwarding to the Treasury Department as directed by DOE.

(3) Maintain records on loan accounts.

(4) Notification of the Secretary without delay:

(i) that the initial disbursement or loan draw-down is ready to be made, together with evidence from the borrower that the bid and proposal preparation has begun or is about to begin;

(ii) Of the date and amount of each subsequent disbursement under the loan;

(iii) Of any nonreceipt of payment within 10 days after the date specified for payment, together with evidence of appropriate notification to the borrower;

(iv) Of any known failure by the borrower to comply with the terms and conditions as set forth in the loan agreement;

(v) Of evidence that the borrower may fall within any of the default conditions set forth in the loan agreement or the borrower may not be able to meet any future scheduled payment of principal or interest; or

(5) Submit to the Secretary periodic (semi-annually or annually) financial reports on the status and conditions of the loan, including the financial ability of the borrower to assume more debt.

**§ 800.402 Reduction or withdrawal of loan.**

(a) The Secretary may withdraw the loan by written notice to the borrower if it is determined that initiation of bid and proposal preparation has not occurred within the period of time set forth in the loan application, and such failure has materially affected the purpose of the Government in issuing the loan.

(b) The Secretary may limit the loan by written notice to the borrower to those amounts already disbursed under the loan if it is determined that the borrower has failed to comply with material terms and conditions as set forth in the loan agreement. The Secretary will notify the borrower that the loan shall be limited only to the amount that has been received by the borrower to the date of the written notice.

**§ 800.403 Assignment or transfer of loan.**

Assignment or transfer by the borrower of a loan made by DOE under this program could only be allowed with the prior written consent of the Secretary.

**§ 800.404 Appeals.**

The loan agreement shall include a provision which specifies that any dispute concerning a question of fact arising under the agreement shall be decided in writing by the Contracting Officer. The borrower may request the Contracting Officer to reconsider any such decision. If not satisfied with the Contracting Officer's final decision, the borrower upon receipt of such written decision may appeal the decision within 30 days, in writing to the Chairman, Financial Assistance Appeal Board (FAAB), Department of Energy, Washington, D.C. 20585. The Board shall proceed in accordance with the Department of Energy's rules and regulations for such purpose. The decision of the Board with respect to such appeals shall be the final decision of the Secretary.

**§ 800.405 Default.**

(a) In the event that the borrower fails to perform the terms and conditions of the loan agreement or any related document, the borrower shall be in default and the Secretary shall have the right, at the Secretary's option, to accelerate the indebtedness and demand full payment of all principal and interest amounts outstanding under the loan;

(b) No failure on the part of the Secretary to make demand at any time shall constitute a waiver of the rights held by the Secretary;

(c) Upon demand by the Secretary, the borrower shall have a period of not more than 30 days from the date of receipt of the Secretary's demand to make payment in full;

(d) In the event that the failure on the part of the borrower to perform the terms and conditions of the loan agreement, or related document, does not constitute an intentional act, but is brought about as a result of circumstances largely beyond the control of the borrower, the Secretary may elect, at the Secretary's option, to defer such performance and/or restructure the repayment required by the loan agreement in any manner the Secretary determines. Circumstances beyond the control of the borrower may include, but are not restricted to, acts of God or of the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather, but in every case the failure to perform must be without the fault or negligence of the borrower;

(e) Should the borrower fail to pay after demand as provided in paragraph (c) of this section, the Secretary shall undertake collection in accordance with the terms of the loan agreement and the applicable law.

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