

**DEPARTMENT OF ENERGY****10 CFR Part 600**

RIN 1991-AB23

**Financial Assistance Rules;  
Regulatory Reduction**

AGENCY: Department of Energy.

ACTION: Final rule.

**SUMMARY:** The Department of Energy (DOE) today issues a final rule to amend its Financial Assistance Rules (Rules) to streamline, simplify, and improve the DOE financial assistance process. The rules have been rewritten to eliminate coverage that is unnecessary and to retain only that coverage that is considered suitable for a regulation.

**EFFECTIVE DATE:** This final rule will be effective March 27, 1996.

**FOR FURTHER INFORMATION CONTACT:** Cheryl D. Seckinger, Office of Policy (HR-51) Office of Procurement and Assistance Management, Department of Energy, 1000 Independence Avenue SE., Washington, D.C. 20585 (202) 586-8246.

**SUPPLEMENTARY INFORMATION:**

- I. Background
- II. Discussion of Changes to the Proposed Rule
- III. Review Under Executive Order 12612
- IV. Regulatory Review
- V. Review Under the Regulatory Flexibility Act
- VI. Review Under the Paperwork Reduction Act
- VII. Review Under the National Environmental Policy Act
- VIII. Review Under Executive Order 12778

**I. Background**

In the August 8, 1995 issue of the Federal Register (60 FR 40323), DOE published a proposed rule to amend its financial assistance rules by revising Subpart A to simplify and streamline the financial assistance process in keeping with Departmental and Government-wide initiatives to improve the way the Department does business. The changes that are published today with minor modifications primarily affect DOE internal procedures contained in Subpart A pertaining to the solicitation, evaluation, and award processes, and have little or no impact on requirements applicable to applicants and recipients of DOE financial assistance. In most instances, the amended rule omits detailed internal procedures for DOE officials, and instead establishes standards or basic requirements that are of primary interest to members of the public. Also, the patent, data and copyright provisions in Subparts A and B have been updated to reflect the recent

changes in the Department of Energy Acquisition Regulations and to clarify how the Intangible Property provisions in Section 600.136 of Subpart B apply to commercial organizations.

This rulemaking is part of DOE's ongoing efforts to streamline its regulatory systems and re-engineer its business processes. In June 1995, the Secretary of Energy Advisory Board's Task Force on Strategic Energy Research and Development issued a report on the Department's energy research and development programs. Consistent with the recommendations provided in this report, the Department currently is examining the activities, processes, and burdens associated with awarding and administering all nonlaboratory research and development contracts and financial assistance awards. As recommendations for conducting these activities more efficiently and effectively are developed, it is possible the Department will propose further revisions to its Financial Assistance Rules.

**II. Discussion of Changes to the Proposed Rule**

No public comments were received in response to the Notice of Proposed Rulemaking. However, DOE has made non-substantive modifications to the proposed rule. Those modifications deserving explanation are described below. The rule has also been amended to make some minor technical changes to correct and update citations and cross-references.

First, the definition of "project" will be retained in Section 600.3, *Definitions*. The reason for retaining it is that the term "project" is a basic financial assistance term of art.

Second, it appears that the unsolicited proposal criteria contained in the existing rule at 600.14(e) were not included in the new Section 600.6, *Eligibility*, contrary to what was stated in the preamble of the proposed rule. While not specifically identified as unsolicited proposal criteria, one of the criteria for justifying noncompetitive financial assistance under Section 600.6(c)(7) provides the basis for acceptance of an unsolicited proposal. The criterion states that a proposed project must be a unique or innovative idea, method, or approach which would not be eligible for financial assistance under a recent, current, or planned solicitation, and must be inappropriate for a competitive solicitation. For purposes of clarification, we have added the term "unsolicited proposals" in Section 600.6(c)(7) in this criterion.

Third, the address for obtaining the guide on preparation and submission of

unsolicited applications has been included in the rule under Section 600.10, *Form and content of applications*. Since DOE is moving toward the electronic submission of applications, the requirement in section 600.10(d) for a "signed application" has been revised. The first complete sentence in Section 600.10(d) now reads "DOE may return an application which is not signed, either in writing or electronically, by an official authorized to bind the applicant." Section 600.16, *Legal authority and effect of an award*, has been revised similarly in order to permit the use of an electronic process. The requirement to send a written review summary to an applicant, upon request, in Section 600.13(c), *Merit review*, has been deleted because it duplicates the requirement in Section 600.19, *Notification to unsuccessful applicants*. Section 600.19 requires DOE to provide an applicant who is not selected for award a written notice which briefly explains why the application was not selected and offers the applicant the opportunity for a more detailed explanation upon request. Because the requirement in Section 600.19 systematically provides information to an unsuccessful applicant, we have retained that coverage, but deleted the notification requirement under merit review. Section 600.29(b)(1) has been rewritten to clarify that each fixed obligation award may *neither* exceed \$100,000 nor exceed one year in length. As proposed, it could be interpreted to be *either/or*.

The existing DOE financial assistance rules applied cost sharing requirements only to cooperative agreements based on the Federal Nonnuclear Energy Research and Development Act. Since then the Energy Policy Act of 1992 was enacted which also requires cost sharing for research, development and demonstration projects carried out under this Act. The proposed rule extended cost sharing requirements to grants as a way of leveraging Federal funds in times of declining budgets. While today's final rule retains this cost sharing policy, it allows for exceptions to meet specific programmatic needs or requirements on a single-case or class basis with the approval of the cognizant program Assistant Secretary or designee.

**III. Review Under Executive Order 12612**

Executive Order 12612 requires that regulations, rules, legislation, and any other policy actions be reviewed for any substantial effects on States, on the relationship between the Federal Government and the States, or in the distribution of power and

responsibilities among various levels of Government.

If there are sufficient substantial direct effects, then the Executive Order requires preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing a policy action. Today's rule revises certain policy and procedural requirements. However, DOE has determined that this rulemaking will not have a substantial direct effect on the institutional interests or traditional functions of States.

#### IV. Regulatory Review

Today's regulatory action has been determined not to be a "significant regulatory action" under Executive Order 12866, "Regulatory Planning and Review," (58 FR 51735, October 4, 1993). Accordingly, today's action was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs.

#### V. Review Under the Regulatory Flexibility Act

This rule was reviewed under the Regulatory Flexibility Act of 1980, Public Law 96-354, 94 Stat. 1164, which requires preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities, i.e., small businesses, small organizations, and small governmental jurisdictions. DOE has concluded that the rule only affects small entities as they apply for and receive financial assistance, and does not create additional economic impact on small entities as a whole. DOE certifies that this rule would not have a significant economic impact on a substantial number of small entities and, therefore, no regulatory flexibility analysis has been prepared.

#### VI. Review Under the Paperwork Reduction Act

No information collection or recordkeeping requirements are imposed upon the public by this rulemaking. Accordingly, no OMB clearance is required under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501, *et seq.*, or OMB implementing regulations at 5 CFR Part 1320.

#### VII. Review Under the National Environmental Policy Act

DOE has concluded that this rule falls into a class of actions (categorical exclusions A5) that are categorically excluded from National Environmental Policy Act (NEPA) review because they would not individually or cumulatively

have significant impact on the human environment, as determined by the Department's regulations (10 CFR Part 1021, Subpart D) implementing the National Environmental Policy Act of 1969 (42 U.S.C. 4321, 4331-4335, 4341-4347 (1976)). Therefore, this rule does not require an environmental impact statement or an environmental assessment pursuant to NEPA.

#### VIII. Review Under Executive Order 12778

Section 2 of Executive Order 12778 instructs each agency to adhere to certain requirements in promulgating new regulations and reviewing existing regulations. These requirements, set forth in sections 2 (a) and (b)(2), include eliminating drafting errors and needless ambiguity, drafting the regulations to minimize litigation, providing clear and certain legal standards for affected conduct, and promoting simplification and burden reduction. Agencies are also instructed to make every reasonable effort to ensure that the regulation specifies clearly any preemptive effect, effect on existing Federal law or regulation, and retroactive effect; describes any administrative proceedings to be available prior to judicial review and any revisions for the exhaustion of such administrative proceedings, and defines the terms. DOE certifies that today's rule meets the requirements of sections 2 (a) and (b) of Executive Order 12778.

#### List of Subjects in 10 CFR Part 600

Accounting; Administrative practice and procedure; Government contracts; Grant programs, Indians, Intergovernmental relations; Loan programs, Lobbying; Penalties; Reporting and recordkeeping requirements.

Richard H. Hopf,

*Deputy Assistant Secretary for Procurement and Assistance Management.*

For the reasons set out in the preamble, Part 600 of Chapter II, Title 10 of the Code of Federal Regulations is amended as set forth below:

#### PART 600—FINANCIAL ASSISTANCE RULES

1. The authority citation for Part 600 continues to read as follows:

Authority: Secs. 644 and 646, Pub. L. 95-91, 91 Stat. 599 (42 U.S.C. 7254 and 7256); Pub. L. 97-258, 96 Stat. 1003-1005 (31 U.S.C. 6301-6308), unless otherwise noted.

#### Subpart D—[Removed and Reserved]

2. The existing Subpart D Cooperative Agreements (§§ 600.300 through 600.307) is removed and reserved.

Part 600 is further amended as set forth below:

#### § 600.112 [Amended]

3. Section 600.112(c) is amended by revising the parenthetical phrase "(see § 600.31 (b) and (c))" to read "(see § 600.26 (b) and (c))."

4. Section 600.136 is revised to read as follows:

#### § 600.136 Intangible property.

(a) Recipients that are institutions of higher education, hospitals, and other non-profit organizations are subject to the following:

(1) The recipient may copyright any work that is subject to copyright and was developed, or for which ownership was purchased, under an award. DOE reserves a royalty-free, nonexclusive and irrevocable right to reproduce, publish or otherwise use the work for Federal purposes, and to authorize others to do so.

(2) Recipients are subject to applicable regulations governing patents and inventions. (See 10 CFR 600.27)

(3) DOE has the right to:

(i) Obtain, reproduce, publish or otherwise use the data first produced under an award.

(ii) Authorize others to receive, reproduce, publish, or otherwise use such data for Federal purposes.

(4) Title to intangible property and debt instruments acquired under an award or subaward vests upon acquisition in the recipient. The recipient shall use that property for the originally-authorized purpose, and the recipient shall not encumber the property without approval of DOE. When no longer needed for the originally authorized purpose, disposition of the intangible property shall occur in accordance with the provisions of § 600.134(g).

(b) Recipients that are commercial entities shall follow the provisions set forth at 10 CFR 600.27.

#### § 600.204 [Amended]

5. In § 600.204 revise "\$ 600.405" to read "\$ 600.205".

#### § 600.221 [Amended]

6. In § 600.221(g)(2) revise "\$ 600.443(c)" to read "\$ 600.243(c)".

#### § 600.224 [Amended]

7. In § 600.224(b)(4) revise "\$ 600.425(g) to read "\$ 600.225(g)".

8. In § 600.224(e)(2)(ii) revise "\$ 600.422" to read "\$ 600.222".

#### § 600.225 [Amended]

9. In paragraph (e) of § 600.225, revise "\$ 600.434" to read "\$ 600.234".

10. In paragraph (f) of § 600.225, revise “§§ 600.431 and 600.432” to read “§§ 600.231 and 600.232”.

**§ 600.226 [Amended]**

11. In paragraph (c) of § 600.226 revise “§ 600.436” to read “§ 600.236”.

**§ 600.230 [Amended]**

12. In paragraph (b) of § 600.230 revise the parenthetical expression “(see § 600.422)” to read “(see § 600.222)”.

13. In § 600.230(d)(4) revise “§ 600.436” to read “§ 600.236”.

14. In § 600.230(f)(2) revise “§ 600.422” to read “§ 600.222”.

**§ 600.232 [Amended]**

15. In § 600.232(c)(3) revise “§ 600.425(a)” to read “§ 600.225(a)”.

16. In § 600.232(g)(2) revise “§ 600.432(e)” to read “§ 600.232(e)”.

**§ 600.236 [Amended]**

17. In paragraph (c) introductory text of § 600.236, revise “§ 600.436” to read “§ 600.236”.

18. In § 600.236(d)(2) revise “§ 600.436(d)(2)(i)” to read “§ 600.236(d)(2)(i)”.

**§ 600.237 [Amended]**

19. In § 600.237(a)(3) revise “§ 600.442” to read “§ 600.242”.

20. In § 600.237(c) revise “§ 600.410”, “§ 600.411”, “§ 600.421”, and “§ 600.450” to read “§ 600.210”, “§ 600.211”, “§ 600.221”, and “§ 600.250” respectively.

**§ 600.241 [Amended]**

21. In paragraph (b) of § 600.241 revise “§ 600.441(e)(2)(iii)” to read “§ 600.241(e)(2)(iii)”.

22. In § 600.241(e)(1)(i) revise “§ 600.441(d)” to read “§ 600.241(d)”.

23. In § 600.241(e)(1)(ii) revise “§ 600.441(b)(3)” to read “§ 600.241(b)(3)”.

24. In § 600.241(e)(2)(ii) revise “§ 600.41(d)” to read “§ 600.241(d)”.

25. In § 600.241(e)(2)(iii) revise “§ 600.441(b)” to read “§ 600.241(b)”.

26. In § 600.241(e)(3) revise “§ 600.441(b)(2)” to read “§ 600.241(b)(2)”.

**§ 600.243 [Amended]**

27. In paragraph (d) of § 600.243, revise the parenthetical expression “(see § 600.435)” to read “(see § 600.235)”.

**§ 600.244 [Amended]**

28. In paragraph (b) of § 600.244, revise “§ 600.443” to read “§ 600.243”.

**§ 600.250 [Amended]**

29. In § 600.250(b)(5) revise “§ 600.432(f)” to read “§ 600.232(f)”.

**§ 600.251 [Amended]**

30. In § 600.251 (c) revise “§ 600.442” to “§ 600.242”.

31. In paragraph (d) of § 600.251 revise “§§ 600.431 and 600.432” to read “§§ 600.231 and 600.232”.

32. In paragraph (e) of § 600.251 revise “§ 600.426” to read “§ 600.226”.

**§ 600.402 [Amended]**

33. § 600.402 is amended in paragraph (d) by revising “§§ 600.25, 600.153, 600.242, and 600.305” to read “§§ 600.21, 600.153, and 600.242”.

**§ 600.403 [Amended]**

34. In paragraph (c), of § 600.403 revise “§§ 600.126, 600.226, and 600.305” to read “§§ 600.126 and 600.226”.

**§ 600.405 [Amended]**

35. In § 600.405(b)(2)(ii)(C), revise “§ 600.424 of subpart E” to read “§ 600.224 of subpart C”.

**§ 600.415 [Amended]**

36. Section 600.415 is amended, in the first sentence, by revising “§ 600.436 of subpart E” to read “§ 600.236 of subpart C”.

Part 600 is further amended as set forth below:

37. Subpart A is revised to read as follows:

**Subpart A—General**

Sec.

- 600.1 Purpose.
- 600.2 Applicability.
- 600.3 Definitions.
- 600.4 Deviations.
- 600.5 Selection of award instrument.
- 600.6 Eligibility.
- 600.7 Small and disadvantaged and women-owned business participation.
- 600.8 Solicitation.
- 600.9 Notice of program interest.
- 600.10 Form and content of applications.
- 600.11 Intergovernmental review.
- 600.12 Generally applicable requirements.
- 600.13 Objective merit review.
- 600.14 Conflict of interest.
- 600.15 Authorized uses of information.
- 600.16 Legal authority and effect of an award.
- 600.17 Contents of award.
- 600.18 Recipient acknowledgement of award.
- 600.19 Notification to unsuccessful applicants.
- 600.20 Maximum DOE obligation.
- 600.21 Access to records.
- 600.22 Disputes and appeals.
- 600.23 Debarment and suspension.
- 600.24 Noncompliance.
- 600.25 Suspension and termination.
- 600.26 Funding.
- 600.27 Patent and data provisions.
- 600.28 Restrictions on lobbying.
- 600.29 Fixed obligation awards.
- 600.30 Cost sharing.

**Subpart A—General**

**§ 600.1 Purpose.**

This part implements the Federal Grant and Cooperative Agreement Act, Pub. L. 95–224, as amended by Pub. L. 97–258 (31 U.S.C. 6301–6308), and establishes uniform policies and procedures for the award and administration of DOE grants and cooperative agreements. This subpart (Subpart A) sets forth the policies and procedures applicable to the award and administration of grants and cooperative agreements.

**§ 600.2 Applicability.**

(a) Except as otherwise provided by Federal statute or program rule, this part applies to applications, solicitations, and new, continuation, and renewal awards (and any subsequent subawards).

(b) Any new, continuation, or renewal award (and any subsequent subaward) shall comply with any applicable Federal statute, Federal rule, Office of Management and Budget (OMB) Circular and Governmentwide guidance in effect as of the date of such award.

(c) Financial assistance to foreign entities is governed, to the extent appropriate, by this part and by the administrative requirements and cost principles applicable to their respective recipient type, e.g. governmental, non-profit, commercial.

**§ 600.3 Definitions.**

*Amendment* means the written document executed by a DOE contracting officer that changes one or more terms or conditions of an existing financial assistance award.

*Award* means the written document executed by a DOE Contracting Officer, after an application is approved, which contains the terms and conditions for providing financial assistance to the recipient.

*Budget period* means the interval of time, specified in the award, into which a project is divided for budgeting and funding purposes.

*Continuation award* means an award for a succeeding or subsequent budget period after the initial budget period of either an approved project period or renewal thereof.

*Contract* means a written procurement contract executed by a recipient or subrecipient for the acquisition of property or services under a financial assistance award.

*Contracting Officer* means the DOE official authorized to execute awards on behalf of DOE and who is responsible for the business management and non-program aspects of the financial assistance process.

*DOE Patent Counsel* means the Department of Energy Patent Counsel assisting the Contracting Officer in the review and coordination of patents and data related items.

*Financial Assistance* means the transfer of money or property to a recipient or subrecipient to accomplish a public purpose of support or stimulation authorized by Federal statute. For purposes of this part, financial assistance instruments are grants and cooperative agreements and subawards.

*Head of Contracting Activity* or HCA means a DOE official with senior management authority for the award and administration of financial assistance instruments within one or more DOE organizational elements.

*Nonprofit organization* means any corporation, trust, foundation, or institution which is entitled to exemption under section 501(c)(3) of the Internal Revenue Code, or which is not organized for profit and no part of the net earnings of which inure to the benefit of any private shareholder or individual (except that the definition of "nonprofit organization" at 48 CFR 27.301 shall apply to the use of the patent clause at Section 600.27).

*Objective merit review* means a thorough, consistent and independent examination of applications based on pre-established criteria by persons knowledgeable in the field of endeavor for which support is requested.

*Program rule* means a rule issued by a DOE program office for the award and administration of financial assistance which may describe the program's purpose or objectives, eligibility requirements for applicants, types of program activities or areas to be supported, evaluation and selection process, cost sharing requirements, etc. These rules usually supplement the generic policies and procedures for financial assistance contained in this part.

*Project* means the set of activities described in an application, State plan, or other document that is approved by DOE for financial assistance (whether such financial assistance represents all or only a portion of the support necessary to carry out those activities.)

*Project period* means the total period of time indicated in an award during which DOE expects to provide financial assistance. A project period may consist of one or more budget periods and may be extended by DOE.

*Recipient* means the organization, individual, or other entity that receives an award from DOE and is financially accountable for the use of any DOE funds or property provided for the

performance of the project, and is legally responsible for carrying out the terms and conditions of the award.

*Renewal award* means an award which adds one or more additional budget periods to an existing project period.

*Research and development* means all research activities, both basic and applied, and all development activities that are supported at universities, colleges, and other non-profit institutions and commercial organizations. "Research" is defined as a systematic study directed toward fuller scientific knowledge or understanding of the subject studied. The term research also includes activities involving the training of individuals in research techniques where such activities utilize the same facilities as other research and development activities and where such activities are not included in the instruction function. "Development" is the systematic use of knowledge and understanding gained from research directed toward the production of useful materials, devices, systems, or methods, including design and development of prototypes and processes.

#### § 600.4 Deviations.

(a) General. (1) A deviation is the use of any policy, procedure, form, standard, term, or condition which varies from a requirement of this part, or the waiver of any such requirement, unless such use or waiver is authorized or precluded by Federal statute. The use of optional or discretionary provisions of this part, including special restrictive conditions used in accordance with §§ 600.114 and 600.212, are not deviations. Awards to foreign entities and the waiver of the cost sharing requirements in § 600.30 or the patent requirements of § 600.27 are not subject to this section.

(2) A single-case deviation is a deviation which applies to one financial assistance transaction and one applicant, recipient, or subrecipient only.

(3) A class deviation is a deviation which applies to more than one financial assistance transaction, applicant, recipient, or subrecipient.

(b) The DOE officials specified in paragraph (c) of this section may authorize a deviation only upon a written determination that the deviation is—

(1) Necessary to achieve program objectives;

(2) Necessary to conserve public funds;

(3) Otherwise essential to the public interest; or

(4) Necessary to achieve equity.

(c) Approval procedures. (1) A deviation request must be in writing and must be submitted to the responsible DOE Contracting Officer. An applicant for a subaward or a subrecipient shall submit any such request through the recipient.

(2) Except as provided in paragraph (c)(3) of this section—

(i) A single-case deviation may be authorized by the responsible HCA. Any proposed single-case deviation from the requirements of § 600.27 concerning patents or data shall be referred to the DOE Patent Counsel for review and concurrence prior to submission to the HCA.

(ii) A class deviation may be authorized by the Deputy Assistant Secretary for Procurement and Assistance Management or designee. Any proposed class deviation from the requirements of § 600.27 concerning patents or data shall be forwarded through the Assistant General Counsel for Technology Transfer and Intellectual Property or designee.

(3) Whenever the approval of OMB, other Federal agency, or other DOE office is required to authorize a deviation, the proposed deviation must be submitted to the Deputy Assistant Secretary for Procurement and Assistance Management or designee for concurrence prior to submission to the authorizing official.

(d) Notice. Whenever a request for a class deviation is approved, DOE shall publish a notice in the Federal Register at least 15 days before the class deviation becomes effective. Whenever a class deviation is contained in a proposed program rule, the preamble to the proposed rule shall describe the purpose and scope of the deviation.

(e) Subawards. A recipient may use a deviation in a subaward only with the prior written approval of a DOE Contracting Officer.

#### § 600.5 Selection of award instrument.

(a) If DOE has administrative discretion in the selection of the award instrument, the DOE decision as to whether the relationship is principally one of procurement or financial assistance shall be made pursuant to the Federal Grant and Cooperative Agreement Act as codified at 31 U.S.C. 6301–6306. A grant or cooperative agreement shall be the appropriate instrument, in accordance with this part, when the principal purpose of the relationship is the transfer of money or property to accomplish a public purpose of support or stimulation authorized by Federal statute. In selecting the type of financial assistance instrument, DOE

shall limit involvement between itself and the recipient in the performance of a project to the minimum necessary to achieve DOE program objectives.

(b) When it is anticipated that substantial involvement will be necessary between DOE and the recipient during performance of the contemplated activity, the award instrument shall be a cooperative agreement rather than a grant. Every cooperative agreement shall explicitly state the substantial involvement anticipated between DOE and the recipient during the performance of the project. Substantial involvement exists if:

(1) Responsibility for the management, control, or direction of the project is shared by DOE and the recipient; or

(2) Responsibility for the performance of the project is shared by DOE and the recipient.

(c) Providing technical assistance or guidance of a programmatic nature to a recipient does not constitute substantial involvement if:

(1) the recipient is not required to follow such guidance;

(2) the technical assistance or guidance is not expected to result in continuing DOE involvement in the performance of the project; or

(3) The technical assistance or guidance pertains solely to the administrative requirements of the award.

(d) In cooperative agreements, DOE has the right to intervene in the conduct or performance of project activities for programmatic reasons. Intervention includes the interruption or modification of the conduct or performance of project activities. Suspension or termination of the cooperative agreement under §§ 600.162 and 600.243 does not constitute intervention in the conduct or performance of project activities.

#### **§ 600.6 Eligibility.**

(a) General. DOE shall solicit applications for financial assistance in a manner which provides for the maximum amount of competition feasible.

(b) Restricted eligibility. If DOE restricts eligibility, an explanation of why the restriction of eligibility is considered necessary shall be included in the solicitation, program rule, or published notice. Except when authorized by statute or program rule, if the aggregate amount of DOE funds available for award under a solicitation or published notice is \$1,000,000 or more, such restriction of eligibility shall be supported by a written determination

initiated by the program office and approved by an official no less than two levels above the initiating program official and concurred in by the Contracting Officer and legal counsel. Where the amount of DOE funds is less than \$1,000,000, the cognizant HCA and the Contracting Officer may approve the determination.

(c) Noncompetitive financial assistance. DOE may award a grant or cooperative agreement on a noncompetitive basis only if the application satisfies one or more of the following selection criteria:

(1) The activity to be funded is necessary to the satisfactory completion of, or is a continuation or renewal of, an activity presently being funded by DOE or another Federal agency, and for which competition for support would have a significant adverse effect on continuity or completion of the activity.

(2) The activity is being or would be conducted by the applicant using its own resources or those donated or provided by third parties; however, DOE support of that activity would enhance the public benefits to be derived and DOE knows of no other entity which is conducting or is planning to conduct such an activity.

(3) The applicant is a unit of government and the activity to be supported is related to performance of a governmental function within the subject jurisdiction, thereby precluding DOE provision of support to another entity.

(4) The applicant has exclusive domestic capability to perform the activity successfully, based upon unique equipment, proprietary data, technical expertise, or other such unique qualifications.

(5) The award implements an agreement between the United States Government and a foreign government to fund a foreign applicant.

(6) Time constraints associated with a public health, safety, welfare or national security requirement preclude competition.

(7) The proposed project was submitted as an unsolicited proposal and represents a unique or innovative idea, method, or approach which would not be eligible for financial assistance under a recent, current, or planned solicitation, and if, as determined by DOE, a competitive solicitation would not be appropriate.

(8) The responsible program Assistant Secretary (or official of equivalent authority), with the approval of the Deputy Assistant Secretary for Procurement and Assistance Management, determines that a noncompetitive award is in the public

interest. This authority may not be delegated.

(d) Approval requirements.

Determinations of noncompetitive awards shall be approved, prior to award, by the initiating program official, by the responsible program Assistant Secretary (or official of equivalent authority) or designee, who shall be not less than two organizational levels above that of the project officer, by the Contracting Officer and shall be concurred in by local legal counsel. Where the amount of DOE funds is less than \$1,000,000 for a noncompetitive financial assistance award, the determination shall be approved by the cognizant HCA and the Contracting Officer. Concurrence for a particular award or class of awards of \$1,000,000 or less may be waived by local legal counsel.

(e) Documentation requirements. A determination of noncompetitive financial assistance (normally prepared by the responsible program official) explaining the basis for the proposed noncompetitive award shall be placed in the award file.

#### **§ 600.7 Small and disadvantaged and women-owned business participation.**

(a) DOE encourages the participation in financial assistance awards of small businesses, including those owned by socially and economically disadvantaged individuals and women, of historically black colleges, and of colleges and universities with substantial minority enrollments.

(b) For definitions of the terms in paragraph (a) of this section, see the Higher Education Act of 1965, and 15 U.S.C. 644, as amended by the Federal Acquisition Streamlining Act (FASA), and implementing regulations under FASA issued by the Office of Federal Procurement Policy.

(c) When entering into contracts under financial assistance awards, recipients and subrecipients shall comply with the requirements of Section 600.144 or Section 600.236, as applicable.

#### **§ 600.8 Solicitation.**

(a) General. A solicitation for financial assistance applications shall be in the form of a program rule or other publicly available document which invites the submission of applications by a common due date or within a prescribed period of time.

(1) A Program Assistant Secretary (or official of equivalent authority) may annually issue a program notice describing research areas in which financial assistance is being made available. Such notice shall also state

whether the research areas covered by the notice are to be added to those listed in a previously issued program rule. If they are to be included, then applications received as a result of the notice may be treated as having been in response to that previously published program rule. If they are not to be included, then applications received in response to the notice are to be treated as unsolicited applications. Solicitations may be issued by a DOE Contracting Officer or program office with prior concurrence of the contracting office.

(2) DOE shall publish either a copy or a notice of the availability of a financial assistance solicitation in the Federal Register. DOE shall publish solicitations or notices in the Commerce Business Daily when potential applicants include for-profit organizations or when there is the potential for significant contracting opportunities under the resulting financial assistance awards.

(b) Subawards. In accordance with the provisions of the applicable statute and program rules, if a DOE financial assistance program involves the award of financial assistance by a recipient to a subrecipient, the recipient shall provide sufficient advance notice so that potential subrecipients may prepare timely applications and secure prerequisite reviews and approvals.

(c) Contents of solicitation. Each solicitation shall provide information as may be necessary to allow potential applicants to decide whether to submit an application, to understand how applications will be evaluated, and to know what the obligations of a recipient would be. At a minimum, each solicitation must include:

(1) A control number assigned by the issuing DOE office;

(2) The amount of money available for award and, if appropriate, the expected size of individual awards broken down by areas of priority or emphasis, and the expected number of awards;

(3) The type of award instrument or instruments to be used;

(4) The Catalog of Federal Domestic Assistance number for the program;

(5) Who is eligible to apply;

(6) The expected duration of DOE support or the period of performance;

(7) An application form or the format to be used, location for application submission, and number of copies required;

(8) The name of the responsible DOE Contracting Officer (or, for program notices or solicitations issued by the program office, the program office contact) to contact for additional information, and, as appropriate, an address where application forms may be obtained;

(9) Whether loans are available under the DOE Minority Economic Impact (MEI) loan program, 10 CFR part 800, to finance the cost of preparing a financial assistance application, and, if MEI loans are available, a general description of the eligibility requirements for such a loan, a reference to Catalog of Federal Domestic Assistance Number 81.063, and the name and address of the DOE office from which additional information and loan application forms can be obtained;

(10) Appropriate periods or due dates for submission of applications and a statement describing the consequences of late submission. If programs have established a series of due dates to allow for the comparison of applications against each other, these dates shall be indicated in the solicitation;

(11) The types of projects or activities eligible for support;

(12) Evaluation criteria and the weight or relative importance of each, which may include one or more of the following or other criteria, as appropriate:

(i) Qualifications of the applicant's personnel who will be working on the project;

(ii) Adequacy of the applicant's facilities and resources;

(iii) Cost-effectiveness of the project;

(iv) Adequacy of the project plan or methodology;

(v) Management capability of the applicant;

(vi) Sources of financing available to the project. Any requirement concerning cost sharing shall be clearly stated (See also § 600.30, Cost Sharing). Cost sharing is generally encouraged.

However, unless cost sharing is required by the solicitation, it shall not be considered in the evaluation process and shall be considered only at the time the award is negotiated.

(vii) Relationship of the proposed project to the objectives of the solicitation;

(13) A listing of program policy factors, if any, indicating the relative importance of each, if appropriate.

Examples of program policy factors are:

(i) Geographic distribution;

(ii) Diverse types and sizes of applicant entities;

(iii) A diversity of methods, approaches, or kinds of work; and

(iv) Projects which are complementary to other DOE programs or projects;

(14) References to or copies of:

(i) Statutory authority for the program;

(ii) Applicable rules, including the appropriate subparts of this part;

(iii) Other terms and conditions applicable to awards to be made under

the solicitation, including allowable and unallowable costs and reporting requirements;

(iv) Policies and procedures for patents, data, copyrights, audiovisual productions and exhibits;

(v) Any required assurances not included in the application form;

(15) The deadline for submission of required or optional preapplications;

(16) Date, time, and location of any briefing for applicants;

(17) Required presubmission reviews and clearances, including a statement as to whether review under E.O. 12372, "Intergovernmental Review of Federal Programs", is required.

(18) Dates by which selections and awards are expected to be made and whether unsuccessful applications will be returned to the applicant or be retained by DOE and for what period of time;

(19) A statement that DOE is under no obligation to pay for any costs associated with preparation or submission of applications if an award is not made. If an award is made, such costs may be allowable as provided in the applicable cost principles (See §§ 600.127 and 600.222);

(20) A statement that DOE reserves the right to fund, in whole or in part, any, all, or none of the applications submitted in response to the solicitation; and

(21) Any other relevant information, including explanatory information or factual basis for justifications required by this part.

#### **§ 600.9 Notice of program interest.**

(a) General. (1) DOE may publish periodic Notices of Program Interest in the Federal Register and other media, as appropriate, which describes broad, general, technical problems and areas of investigation for which DOE may award grants or cooperative agreements.

(2) DOE shall evaluate any application submitted under a Notice of Program Interest as an unsolicited application.

(b) Contents. The notice shall include:

(1) A brief description of the areas of interest for which DOE may provide financial assistance;

(2) A statement about how resulting applications will be evaluated and the criteria for selection and funding;

(3) An expiration date with an explanation that such a date does not represent a common deadline for applications but rather that applications may be submitted at any time before the notice expires; and

(4) The location for application submission.

**§ 600.10 Form and content of applications.**

(a) General. Applications shall be required for all financial assistance projects or programs.

(b) Forms. Applications shall be on the form or in the format and in the number of copies specified in a program rule, in the solicitation, or in these regulations. (See also §§ 600.112 and 600.210.) For unsolicited applications, a guide for preparation and submission is available from Field/Headquarters Support Division, Office of Procurement and Assistance Management, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585.

(c) Contents of an application. In general, a financial assistance application shall include:

(1) A facesheet containing basic identifying information. The facesheet shall be the Standard Form (SF)424 or other approved DOE application form;

(2) A detailed narrative description of the proposed project, including the objectives of the project and the applicant's plan for carrying it out;

(3) A budget with supporting justification; and

(4) Any required preaward assurances.

(d) Incomplete applications. DOE may return an application that:

(1) Is not signed, either in writing or electronically, by an official authorized to bind the applicant; or

(2) Omits any information or documentation required by statute, program rule, or the solicitation, if the nature of the omission precludes review of the application.

(e) Supplemental information. During the review of a complete application, DOE may request the submission of additional information only if the information is essential to evaluate the application.

**§ 600.11 Intergovernmental review.**

Intergovernmental review of DOE financial assistance shall be conducted in accordance with 10 CFR part 1005.

**§ 600.12 Generally applicable requirements.**

(a) Except as expressly exempted by Federal statute or program rule, recipients and subrecipients of DOE financial assistance shall comply with all generally applicable requirements to which they are subject. Generally applicable requirements include, but are not limited to, the requirements of this part, Federal statutes, the OMB Circulars and other Governmentwide guidance implemented by this part, Executive Orders, and the requirements identified in appendix A of this part.

(b) Provisions shall be made to design and construct all buildings, in which DOE funds are used, to meet appropriate seismic design and construction standards. Seismic codes and standards meeting or exceeding the provisions of each of the model codes listed in this paragraph are considered to be appropriate for purposes of this part. These codes provide a level of seismic safety that is substantially equivalent to the National Earthquake Hazards Reduction Program (NEHRP) Recommended Provisions for the Development of Seismic Regulations for New Buildings, 1988 Edition (Federal Emergency Management Administration 222 and 223). Revisions of these model codes that are substantially equivalent to or exceed the then current or immediately preceding edition of the NEHRP Recommended Provisions (which are updated triennially) shall be considered to be appropriate standards. The model codes are as follows:

(1) 1991 Uniform Building Code, of the International Council of Building Officials,

(2) 1992 Supplement to the National Building Code, of the Building Official and Code Administrators International.

(3) 1992 Amendments to the Standard Building Code, of the Southern Building Code Congress International.

**§ 600.13 Objective merit review.**

(a) General. (1) It is the policy of DOE that any financial assistance be awarded through a merit-based selection process. Objective merit review means a thorough, consistent and independent examination of applications based on pre-established criteria by persons knowledgeable in the field of endeavor for which support is requested.

(2) Each program office must establish an objective merit review system covering the financial assistance programs it administers. Objective merit review of financial assistance applications is intended to be advisory and is not intended to replace the authority of the project/program official with responsibility for deciding whether an award will be made. It is expected that the cognizant project/program officer(s) who will select or be in the direct chain of supervision recommending selection or rejection of applications will not be a part of the objective review group. The objective merit review system must set forth the relationship between the reviewing individuals, or the review committees or groups, program/project management involved with directly advising the selection official with respect to program/project policy considerations and the selection official who has the

final decision-making authority. In defining this relationship, the system must set out, as a minimum, the decision-making and documentation processes to be followed by the selection official in accepting or rejecting objective merit review recommendations.

(b) Each formal review system must contain the following elements:

(1) Basic review standards.

Applications should undergo an initial review for conformance with technical and administrative requirements stated in the notice or solicitation and for funding availability. For applications which pass the initial review, the DOE evaluation shall be in accordance with stated evaluation criteria set forth in the applicable program rule or notice, solicitation, or, where appropriate, the unsolicited proposal criteria in § 600.6(c)(7).

(2) Applications which have successfully completed an initial review are normally subjected to an objective merit review by a group comprised of three or more professionally and technically qualified persons. This advisory review is limited to technical and/or cost matters and should be separate from any programmatic review of program/policy factors involved in making a selection/rejection decision.

(3) The reviewers of any particular application may be any mixture of federal or non-federal experts, including individuals from within the cognizant program office, except those involved in approving/disapproving the application. The DOE shall select external (non-DOE Federal or non-federal) reviewers on the basis of their professional qualifications and expertise.

(c) Reviewers with interest in application being reviewed. Reviewers must comply with the requirements for the avoidance of conflict of interest established in § 600.14.

(d) Outside reviewers. An outside reviewer shall be required to sign, either in writing or electronically, a written statement agreeing to use the application information only for review and to treat it in confidence except to the extent that the information is available to the general public without restriction as to its use from any source, including the applicant. Further, the reviewer shall be required to agree to comply with any notice or restriction placed on the application. Upon completion of the review, the reviewer shall return all copies of the application (or abstracts, if any) to DOE; and unless authorized by DOE, the reviewer shall not contact the applicant concerning any aspect of the application.

**§ 600.14 Conflict of interest.**

Any person who participates in the review of applications for DOE financial assistance or in the administration of DOE financial assistance shall comply with 1010.101(a) and 1010.302(a)(1) of the DOE rules on the conduct of employees and special employees (consultants) at 10 CFR part 1010. Current and former DOE employees who participate in any aspect of the financial assistance process shall comply with all applicable requirements of 10 CFR part 1010.

**§ 600.15 Authorized uses of information.**

(a) General. Information contained in applications shall be used only for evaluation purposes unless such information is generally available to the public or is already the property of the Government. The Trade Secrets Act, 18 U.S.C. 1905, prohibits the unauthorized disclosure by Federal employees of trade secret and confidential business information.

(b) Treatment of application information. (1) An application may include technical data and other data, including trade secrets and/or privileged or confidential commercial or financial information, which the applicant does not want disclosed to the public or used by the Government for any purpose other than application evaluation. To protect such data, the applicant should specifically identify each page including each line or paragraph thereof containing the data to be protected and mark the cover sheet of the application with the following Notice as well as referring to the Notice on each page to which the Notice applies:

Notice of Restriction on Disclosure and Use of Data

The data contained in pages \_\_\_\_\_ of this application have been submitted in confidence and contain trade secrets or proprietary information, and such data shall be used or disclosed only for evaluation purposes, provided that if this applicant receives an award as a result of or in connection with the submission of this application, DOE shall have the right to use or disclose the data herein to the extent provided in the award. This restriction does not limit the Government's right to use or disclose data obtained without restriction from any source, including the applicant.

(2) Unless a solicitation specifies otherwise, DOE shall not refuse to consider an application solely on the basis that the application is restrictively marked.

(3) Data (or abstracts of data) marked with the Notice under paragraph (b)(1) of this section shall be retained in confidence and used by DOE or its

designated representatives as specified in § 600.13 solely for the purpose of evaluating the proposal. The data so marked shall not be disclosed or used for any other purpose except to the extent provided in any resulting award, or to the extent required by law, including the Freedom of Information Act (5 U.S.C. 552) (10 CFR part 1004). The Government shall not be liable for disclosure or use of unmarked data and may use or disclose such data for any purpose.

(4) The Government shall obtain unlimited rights in the technical data contained in any application which results in an award except those portions of the technical data which the applicant asserts and properly marks as proprietary data, or which are not directly related to or will not be utilized in the project and are deleted from the application with the concurrence of DOE.

(5) The clause at 48 CFR 52.227-23, which applies only to technical data and not to other data such as privileged or confidential commercial or financial information shall apply to every award.

**§ 600.16 Legal authority and effect of an award.**

(a) A DOE financial assistance award is valid only if it is in writing and is signed, either in writing or electronically, by a DOE Contracting Officer.

(b) DOE funds awarded under a grant or cooperative agreement shall be obligated as of the date the DOE Contracting Officer signs the award; however, the recipient is not authorized to incur costs under an award prior to the beginning date of the budget period shown in the award except as may be authorized in accordance with §§ 600.125(e) or 600.230 of this part. The duration of the DOE financial obligation shall not extend beyond the expiration date of the budget period shown in the award unless authorized by a DOE Contracting Officer by means of a continuation or renewal award or other extension of the budget period.

**§ 600.17 Contents of award.**

Each financial assistance award shall be made on a Notice of Financial Assistance Award (DOE F 4600.1) which contains basic identifying and funding information together with attachments including a budget, any special terms and conditions, and any other provisions necessary to establish the respective right, duties, obligation, and responsibilities of DOE and the recipient, consistent with the requirements of this part.

**§ 600.18 Recipient acknowledgement of award.**

(a) After signature by the DOE Contracting Officer, the award shall be sent to the recipient. The recipient shall acknowledge acceptance by returning a copy signed either in writing or electronically. No DOE funds shall be disbursed until the award document signed by the recipient is received by DOE.

(b) In the event a recipient declines an award, DOE shall deobligate the funds obligated by the award after providing the applicant with at least two weeks written notice of DOE's intention to deobligate.

(c) After the recipient acknowledges the award, the terms and conditions of the award may be amended only upon the written request or with the written concurrence of the recipient unless the amendment is one which DOE may make unilaterally in accordance with a program rule or this part.

**§ 600.19 Notification to unsuccessful applicants.**

DOE shall promptly notify in writing each applicant whose application has not been selected for award or whose application cannot be funded because of the unavailability of appropriated funds. If the application was not selected, the written notice shall briefly explain why the application was not selected and, if for grounds other than unavailability of funds, shall offer the unsuccessful applicant the opportunity for a more detailed explanation upon request.

**§ 600.20 Maximum DOE obligation.**

(a) The maximum DOE obligation to the recipient is—

(1) For monetary awards, the amount shown in the award as the amount of DOE funds obligated, and

(2) Any designated property.

(b) DOE shall not be obligated to make any additional, supplemental, continuation, renewal, or other award for the same or any other purpose.

**§ 600.21 Access to records.**

(a) In addition to recipient and subrecipient responsibilities relative to access to records specified in §§ 600.153 and 600.242, for any negotiated contract or subcontract in excess of \$10,000 under a grant or cooperative agreement, DOE, the Comptroller General of the United States, the recipient and the subrecipient (if the contract was awarded under a financial assistance subaward), or any of their authorized representatives shall have the right of access to any books, documents, papers, or other records of the contractor or subcontractor which are pertinent to

that contract or subcontract, in order to make audit, examination, excerpts, and copies.

(b) The right of access may be exercised for as long as the applicable records are retained by the recipient, subrecipient, contractor, or subcontractor.

#### **§ 600.22 Disputes and appeals.**

(a) Informal dispute resolution. Whenever practicable, DOE shall attempt to resolve informally any dispute over the award or administration of financial assistance. Informal resolution, including resolution through an alternative dispute resolution mechanism, shall be preferred over formal procedures available in 10 CFR Part 1024, to the extent practicable.

(b) Alternative dispute resolution (ADR). Before issuing a final determination in any dispute in which informal resolution has not been achieved, the Contracting Officer shall suggest that the other party consider the use of voluntary consensual methods of dispute resolution, such as mediation. The DOE dispute resolution specialist is available to provide assistance for such disputes, as are trained mediators of other federal agencies. ADR may be used at any stage of a dispute.

(c) Final determination. Whenever a dispute is not resolved informally or through an alternative dispute resolution process, DOE shall mail (by certified mail) a brief written determination signed by a Contracting Officer, setting forth DOE's final disposition of such dispute. Such determination shall contain the following information:

(1) A summary of the dispute, including a statement of the issues and of the positions taken by the Department and the party or parties to the dispute; and

(2) The factual, legal and, if appropriate, policy reasons for DOE's disposition of the dispute.

(d) Right of appeal. (1) Except as provided in paragraph (f)(1) of this section, the final determination under paragraph (c) of this section may be appealed to the Financial Assistance Appeals Board (the Board) in accordance with the procedures set forth in 10 CFR part 1024.

(2) If the final determination under paragraph (c) of this section involves a dispute over which the Board has jurisdiction as provided in paragraph (f)(2) of this section, the Contracting Officer's determination shall state that, with respect to such dispute, the determination shall be the final decision

of the Department unless, within 60 days, a written notice of appeal is filed.

(3) If the final determination under paragraph (c) of this section involves a dispute over which the Board has no jurisdiction as provided in paragraph (f)(1) of this section, the Contracting Officer's determination shall state that, effective immediately or on a later date specified therein, the determination shall, with respect to such dispute, be the final decision of the Department.

(e) Effect of appeal. The filing of an appeal with the Board shall not stay any determination or action taken by DOE which is the subject of the appeal. Consistent with its obligation to protect the interests of the Federal Government, DOE may take such authorized actions as may be necessary to preserve the status quo pending decision by the Board, or to preserve its ability to provide relief in the event the Board decides in favor of the appellant.

(f) Review on appeal. (1) The Board shall have no jurisdiction to review:

(i) Any preaward dispute (except as provided in paragraph (f)(2)(ii) of this section), including use of any special restrictive condition pursuant to §§ 600.114 or 600.212;

(ii) DOE denial of a request for a deviation under §§ 600.4, 600.103, or 600.205 of this part;

(iii) DOE denial of a request for a budget revision or other change in the approved project under §§ 600.125, 600.127, 600.222, or 600.230 of this part or under another term or condition of the award;

(iv) Any DOE action authorized under §§ 600.162(a) (1), (2), (3) or (5); or §§ 600.243 (a)(1), (a)(3) for suspensions only; or § 600.162(a)(4) or § 600.243(a)(4) for actions disapproving renewal applications or other requests for extension of time or additional funding for the same project when related to recipient noncompliance, or such actions authorized by program rule;

(v) Any DOE decision about an action requiring prior DOE approval under § 600.144, or § 600.236 of this part or under another term or condition of the award;

(vi) A DOE decision not to make a continuation award, which decision is based on the insufficiency of available appropriations;

(vii) Any matter which is under the jurisdiction of the Patent Compensation Board (10 CFR 780.3);

(viii) Any matter which may be heard by the Invention Licensing Appeals Board (10 CFR 781.65 and 781.66); and

(ix) Any other dispute not described in paragraph (f)(2) of this section.

(2) In addition to any right of appeal established by program rule, or by the terms and conditions (not inconsistent with paragraph (f)(1) of this section) of an award, the Board shall have jurisdiction to review:

(i) A DOE determination that the recipient has failed to comply with the applicable requirements of this part, the program statute or rules, or other terms and conditions of the award;

(ii) A DOE decision not to make a continuation award based on any of the determinations described in paragraph (f)(2)(i) of this section;

(iii) Termination of an award for cause, in whole or in part, by DOE;

(iv) A DOE determination that an award is void or invalid;

(v) The application by DOE of an indirect cost rate; and

(vi) DOE disallowance of costs.

(3) In reviewing disputes authorized under paragraph (f)(2) of this section, the Board shall be bound by the applicable law, statutes, and rules, including the requirements of this part, and by the terms and conditions of the award.

(4) The decision of the Board shall be the final decision of the Department.

#### **§ 600.23 Debarment and suspension.**

Applicants, recipients, subrecipients, and contractors under financial assistance awards may be debarred and suspended for the causes and in accordance with the procedures set forth in 10 CFR part 1036.

#### **§ 600.24 Noncompliance.**

(a) Except for noncompliance with nondiscrimination requirements under 10 CFR part 1040, whenever DOE determines that a recipient has not complied with the applicable requirements of this part, with the requirements of any applicable program statute or rule, or with any other term or condition of the award, a DOE Contracting Officer shall provide to the recipient (by certified mail, return receipt requested) a written notice setting forth:

(1) The factual and legal bases for the determination of noncompliance;

(2) The corrective actions and the date (not less than 30 days after the date of the notice) by which they must be taken.

(3) Which of the actions authorized under §§ 600.122(n), 600.162(a) or § 600.243(a) of this part DOE may take if the recipient does not achieve compliance within the time specified in the notice, or does not provide satisfactory assurances that actions have been initiated which will achieve compliance in a timely manner.

(b) DOE may take any of the actions set forth in § 600.121(n), § 600.162(a),

or § 600.243(a) of this part concurrent with the written notice required under paragraph (a) of this section or with less than 30 days written notice to the recipient whenever:

- (1) There is evidence the award was obtained by fraud;
- (2) The recipient ceases to exist or becomes legally incapable of performing its responsibilities under the financial assistance award; or
- (3) There is a serious mismanagement or misuse of financial assistance award funds necessitating immediate action.

#### **§ 600.25 Suspension and termination.**

(a) Suspension and termination for cause. DOE may suspend or terminate an award for cause on the basis of:

- (1) a noncompliance determination under §§ 600.24, 600.122(n), 600.162(a), or § 600.243(a); or
- (2) an suspension or debarment of the awardee under § 600.23.

(b) Notification requirements. Except as provided in § 600.24, 600.162(a), or § 600.243(a) before suspending or terminating an award for cause, DOE shall mail to the awardee (by certified mail, return receipt requested) a separate written notice in addition to that required by §§ 600.24(a), 600.162(a), or § 600.243(a) at least ten days prior to the effective date of the suspension or termination. Such notice shall include, as appropriate:

- (1) The factual and legal bases for the suspension or termination;
- (2) The effective date or dates of the DOE action;
- (3) If the action does not apply to the entire award, a description of the activities affected by the action;
- (4) Instructions concerning which costs shall be allowable during the period of suspension, or instructions concerning allowable termination costs, including in either case, instructions concerning any subgrants or contracts;
- (5) Instructions concerning required final reports and other closeout actions for terminated awards (see §§ 600.170 through 600.173 and §§ 600.250 through 600.252);
- (6) A statement of the awardee's right to appeal a termination for cause pursuant to § 600.22; and
- (7) The dated signature of a DOE Contracting Officer.

(c) Suspension. (1) Unless DOE and the awardee agree otherwise, no period of suspension shall exceed 90 days.

(2) DOE may cancel the suspension at any time, up to and including the date of expiration of the period of suspension, if the awardee takes satisfactory corrective action before the expiration date of the suspension or gives DOE satisfactory evidence that such corrective action will be taken.

(3) If the suspension has not been cancelled by the expiration date of the period of suspension, the awardee shall resume the suspended activities or project unless, prior to the expiration date, DOE notifies the awardee in writing that the period of suspension shall be extended consistent with paragraph (c)(1) of this section or that the award shall be terminated.

(4) As of the effective date of the suspension, DOE shall withhold further payments and shall allow new obligations incurred by the awardee during the period of suspension only if such costs were authorized in the notice of suspension or in a subsequent letter.

(5) If the suspension is cancelled or expires and the award is not terminated, DOE shall reimburse the awardee for any authorized allowable costs incurred during the suspension and, if necessary, may amend the award to extend the period of performance.

(d) Termination by mutual agreement. In addition to any situation where a termination for cause pursuant to §§ 600.24, 600.160 through 600.162 or §§ 600.243 through 600.244 is appropriate, either DOE or the awardee may initiate a termination of an award (or portion thereof) as described in this paragraph. If the awardee initiates a termination, the awardee must notify DOE in writing and specify the awardee's reasons for requesting the termination, the proposed effective date of the termination, and, in the case of a partial termination, a description of the activities to be terminated, and an appropriate budget revision. DOE shall terminate an award or portion thereof under this paragraph only if both parties agree to the termination and the conditions under which it shall occur. If DOE determines that the remaining activities under a partially terminated award would not accomplish the purpose for which the award was originally awarded, DOE may terminate the entire award.

(e) Effect of termination. The awardee shall incur no new obligations after the effective date of the termination of an award (or portion thereof), and shall cancel as many outstanding obligations as possible. DOE shall allow full credit to the awardee for the DOE share of noncancellable obligations properly incurred by the awardee prior to the effective date of the termination.

(f) Subgrants. Awardees shall follow the policies and procedures in this section and in §§ 600.24, 600.160 through 600.162 or §§ 600.243 through 600.244 for suspending and terminating subgrants.

#### **§ 600.26 Funding.**

(a) General. The project period during which DOE expects to provide award support for an approved project shall be specified on the Notice of Financial Assistance Award (DOE Form 4600.1).

(b) Budget period and continuation awards. If the project period is 12 months or less, the budget period and the project period shall be coextensive. Multiyear awards, including formula awards, shall generally be funded annually within the approved project period. Funding for each budget period within the project period shall be contingent on DOE approval of a continuation application submitted in accordance with a schedule specified by DOE. A continuation application shall include:

- (1) A statement of technical progress or status of the project to date;
- (2) A detailed description of the awardee's plans for the conduct of the project during the coming year; and
- (3) A detailed budget for the upcoming budget period, including an estimate of unobligated balances. A detailed budget need not be submitted if the new or renewal application contained future-year budgets sufficiently detailed to allow DOE to review and approve the categories and elements of cost. Should the award have a change in scope or significant change in the budget, DOE may request a detailed budget.

(4) DOE shall review a continuation application for the adequacy of the awardee's progress and planned conduct of the project in the subsequent budget period. DOE shall not require a continuation application to compete against any other application. The amount and award of continuation funding is subject to the availability of appropriations.

(c) Renewal awards. Discretionary renewal awards may be made either on the basis of a solicitation or on a noncompetitive basis. If DOE proposes to restrict eligibility for a discretionary renewal award to the incumbent grantee, the noncompetitive award must be justified in accordance with § 600.6(b)(2). Renewal applications must be submitted no later than 6 months prior to the scheduled expiration of the project period unless a program rule or other published instruction establishes a different application deadline.

(d) Extensions. Unless otherwise specified in the award terms and conditions, recipients of financial assistance awards, except recipients of SBIR awards (See § 600.181), may extend the expiration date of the final budget period of the project (thereby extending the project period) if

additional time beyond the established expiration date is needed to assure adequate completion of the original scope of work within the funds already made available. A single extension, which shall not exceed twelve (12) months, may be made for this purpose, and must be made prior to the originally established expiration date. The recipient must notify the cognizant DOE Contracting Officer in the awarding office in writing within ten (10) days of making the extension.

**§ 600.27 Patent and data provisions.**

(a) General. Financial assistance shall be awarded and administered by DOE in compliance with the patent and data provisions of this section (See also §§ 600.136 and 600.234.) To the extent not otherwise provided in this part, the policies, procedures and clauses referenced for contracts in 48 CFR part 927 and 41 CFR part 9–9 shall normally be applicable to the award and administration of Departmental grants and cooperative agreements. Copies of 41 CFR part 9–9 are available by contacting the DOE Patent Counsel.

(b) Required clauses. In all solicitations and awards both for the support of research, development, and demonstration and for other efforts, the DOE Contracting Officer shall consult the DOE Patent Counsel for applicable patent and data clauses from those listed below and/or for modifications thereto. In reading each 48 CFR part 27 and 48 CFR part 952 patent and data clause selected for inclusion in a solicitation or award, the term “contract” when referring to a prime contract shall be read as “award.” The term “contractor” shall be read as referring to the “awardee.” The term “subcontract” shall be read as “subaward or a procurement contract under an award or subaward and/or a procurement subcontract under an awardee’s or subawardee’s contract.” The term “Acquisition” with respect to the Long Form Patent Rights Clause shall be read as “Retention.” The terms “offerors” and “quoters” shall be read as “applicants,” and “proposal” and “quotation” shall be read as “application.”

(1) *Patent clauses.* (i) (Short Form Patent Clause). Incorporate the clause at 48 CFR 952.227–11 for awards to a domestic small business firm or nonprofit organization as defined at 48 CFR 27.301. In accordance with 35 U.S.C. 202(a)(ii), the DOE may issue an exceptional circumstances determination. To implement any exceptional circumstances determination, DOE will modify 48 CFR 952.227–11 to retain greater rights in

subject inventions. Such modifications will be only to the extent necessary to implement the exceptional circumstances determination.

(ii) (Long Form Patent Clause). For awards to a large business firm or other organization, other than a domestic small business firm or nonprofit organization as set forth in 48 CFR 27.301, incorporate the clause at 48 CFR 952.227–13.

(iii) The notice of Right to Request Patent Waiver at 48 CFR 952.227–84 shall also be inserted in all solicitations to advise applicants of their rights to request in advance of, or within 30 days after the award is signed, a waiver of all or any part of the rights of the United States with respect to subject inventions. For unsolicited applications, DOE shall provide this notice to the applicant prior to award.

(2) *Data Clauses (includes copyright provisions)* (i) Rights in Data—General. (A) Incorporate 48 CFR 52.227–14 with Alternates I and V. Solicitations shall also include the Representation of Limited Rights Data and Restricted Computer Software clause at 48 CFR 52.227–15.

(B) In awards for grants and cooperative agreements with institutions of higher education, hospitals, and other non-profit organizations, the following paragraph (c) will be used in lieu of the provisions in 48 CFR 52.227–14(c):

(c) Copyright. (1) Data first produced in the performance of the award. Except as otherwise specifically provided in this award, the recipient may establish claim to copyright subsisting in any data first produced in the performance of this award. When claim to copyright is made, the Recipient shall affix the applicable copyright notice of 17 U.S.C. 401 or 402 and acknowledgement of Government sponsorship (including award number) to the data when such data are delivered to the Government, as well as when the data are published or deposited for registration as a published work in the U.S. Copyright Office. The recipient grants to the Government a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use the work for Federal purposes, and to authorize others to do so. The right to publish includes the right to publicly distribute. The right to use the work for Federal purposes includes the right to prepare derivative works.

(C) For grants and cooperative agreements with commercial organizations, foreign governments, organizations under the jurisdiction of foreign governments, and international organizations, the provisions of the following paragraph (d)(3) shall be used in addition to the provisions in 48 CFR 52.227–14:

(d)(3) The Recipient agrees not to establish claim to copyright in computer software first produced in the performance of this award without prior written permission of the Contracting Officer. When such permission is granted, the Contracting Officer shall specify appropriate terms to assure dissemination of the software. The recipient shall promptly deliver to the Contracting Officer or to the DOE Patent Counsel designated by the Contracting Officer a duly executed and approved instrument fully confirmatory of all rights to which the Government is entitled, and other terms pertaining to the computer software to which claim to copyright is made.

(D) If programmatic needs on a particular award require the delivery to the Government of limited rights data or restricted computer software, Alternates II or III of 48 CFR 52.227–14 shall also be added.

(ii) Restriction on Disclosure and Use of Data. Insert the Notice at § 600.15(b)(1) in all solicitations.

(iii) Rights to Application Data. As discussed at § 600.15(b)(5), incorporate 48 CFR 52.227–23.

(iv) Additional data requirements. Incorporate 48 CFR 52.227–16. In the event all technical data requirements are known in advance of and are set forth in the agreement or, the award is for the performance of basic or applied research and is to be performed solely by a university or college as discussed in 48 CFR 27.406(b), 48 CFR 52.227–16 does not need to be incorporated.

(3) *Authorization and consent.* Incorporate 48 CFR 52.227–1 or Alternates I or II, as appropriate, in accordance with the guidance in 48 CFR 927.201–1 and 48 CFR 27.201.

(4) *Patent indemnity.* Incorporate the clause set forth in 48 CFR 52.227–3, as appropriate, in accordance with the guidance in 48 CFR 27.203–1 and 48 CFR 27.203–3.

(5) *Filing of Patent Applications-Classified Subject Matter.* Incorporate the following paragraphs in any solicitation or award which covers, or is likely to cover, classified subject matter: Classified Inventions

(a) The recipient shall not file or cause to be filed on any invention or discovery conceived or first actually reduced to practice in the course of or under this award in any country other than the United States, an application or registration for a patent without first obtaining written approval of the Contracting Officer.

(b) When filing a patent application in the United States on any invention or discovery conceived of or first actually reduced to practice in the course of or under this award, the subject matter of which is classified for reasons of security, the awardee shall observe all applicable security regulations covering the transmission of classified subject matter. When transmitting the patent application to the United States Patent and Trademark

Office, the awardee shall, by separate letter, identify by agency and agreement number the award(s) which require security classification markings to be placed on the application.

**(6) Notice and Assistance Regarding Patent and Copyright Infringement.**

Incorporate the clause at 48 CFR 52.227-2, in accordance with the guidance in 48 CFR 27.202, in all awards in excess of \$100,000 for construction, research, development, and demonstration work which is to be performed within the United States, its possessions, or Puerto Rico.

**(7) Royalty Information.** Incorporate 48 CFR 52.227-6.

**(8) Refund of Royalties.** As discussed in 48 CFR 927.206, incorporate the clause at 48 CFR 952.227-9 in solicitations and awards where the Contracting Officer believes royalties will have to be paid by the awardees or subawardee or contractor at any tier.

**(9) Subawards and contracts under award.** The recipient shall include the applicable clauses of this section in any subaward or contract awarded under the award and assure that the applicable clauses are also included by subrecipients in contracts.

**§ 600.28 Restrictions on lobbying.**

Procedures regarding restrictions on lobbying activities of applicants and recipients are contained in 10 CFR 601.110.

**§ 600.29 Fixed obligation awards.**

(a) General. This section contains provisions applicable to the award of financial assistance instruments on a fixed amount basis. Under a fixed obligation award, funds are issued in support of a project without a

requirement for Federal monitoring of actual costs subsequently incurred.

(b) Provisions applicable to fixed obligation awards. Financial assistance awards may be made on a fixed obligation basis subject to the following requirements:

(1) Each fixed obligation award may neither exceed \$100,000 nor exceed one year in length.

(2) Programs which require mandatory cost sharing are not eligible.

(3) Proposed costs must be analyzed in detail to ensure consistency with applicable cost principles.

(4) Budget categories are not stipulated in making an award. However, budgets are submitted by an applicant and reviewed for purposes of establishing the amount to be awarded.

(5) Payments must be made in the same manner as other financial assistance awards, except that when determined appropriate by the cognizant program official and contracting officer a lump sum payment may be made.

(6) Recipients must certify in writing to the contracting officer at the end of the project that the activity was completed or the level of effort was expended, however should the activity or effort not be carried out, the recipient would be expected to make appropriate reimbursements.

(7) Periodic reports may be established for each award so long as they are not more frequently than quarterly.

(8) Changes in principal investigator or project leader, scope of effort, or institution, must receive the prior approval of the Department.

**§ 600.30 Cost sharing.**

In addition to the requirements of § 600.123 or § 600.224, the following requirements apply to research, development, and demonstration projects:

(a) When DOE awards financial assistance for research, development, and demonstration projects where the primary purpose of the project is the ultimate commercialization and utilization of technology by the private sector and when there are reasonable expectations that the recipient will receive significant present or future economic benefits beyond the instant award as a result of the performance of the project, cost sharing shall be required. Unless the cost sharing is required by statute, a waiver of the requirement on a single-case or class basis may be approved by the cognizant Program Assistant Secretary or designee.

(b) Except as provided in section 3002 of the Energy Policy Act of 1992, 42 U.S.C. 13542, or program rule, DOE will decide, on a case-by-case basis, the amount of cost sharing required for a particular project.

(c) Factors in addition to those specified in § 600.123 or § 600.224, which may be considered when negotiating cost sharing for research, development, and demonstration projects include the potential benefits to a recipient resulting from the project and the length of time before a project is likely to be commercially successful.

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