

## § 600.19

### § 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, includ-

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ing 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

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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