

§ 800.203

in accordance with § 800.303, default in accordance with § 800.304 and appeals in accordance with § 800.307.

(c) The Secretary may require, as preconditions to disbursement, that the borrower have specified amounts of working capital (including amounts derived from Federal financial assistance) and maintain specified financial ratios, where in the Secretary's judgment satisfaction of such preconditions is necessary to assure the borrower's ability to make and perform the contract, agreement or subcontract according to the bid or proposal, or is otherwise necessary to protect the interests of the United States.

(d) The Secretary may require pledges, personal guarantees and other collateral security, and the maintenance of insurance on the borrower's assets and principals, in amounts and on terms appropriate in the Secretary's judgment, to protect the interests of the United States.

§ 800.203 Loan limits.

The Secretary shall not make a loan in excess of \$50,000, or make aggregate loans to the same minority business enterprise, including its affiliates, in any Federal fiscal year in excess of \$100,000. In addition, the Secretary shall not increase a loan to an amount which would cause the limits set forth in the previous sentence to be exceeded. Nothing in this regulation shall be interpreted to restrict the Secretary, in making the various determinations provided for in this regulation, from taking into account considerations relating to the Office of Minority Economic Impact loan program as a whole.

§ 800.204 Deviations.

(a) To the extent consistent with the Act, relevant appropriations acts, and other applicable statutes, DOE may deviate on an individual application basis from the requirements of this regulation upon a finding by the Secretary that such deviation is necessary or appropriate in the individual case for the accomplishment of program objectives.

(b) The contracting officer may, subject to written agreement by other necessary parties, modify or amend the terms and conditions of a loan provided that such modification or amendment

10 CFR Ch. III (1-1-06 Edition)

shall be consistent with this regulation.

Subpart D—Loan Administration

§ 800.300 Loan servicing.

(a) Servicing of a loan under this regulation may be performed by DOE, by another Federal agency, or by a servicing agent (commercial bank, broker, or other financial institution or entity) having the capability, and legally qualified, to service the loan consistently with the requirements of this regulation, which contracts with DOE to act as servicing agent. In determining the capability of a prospective servicing agent, DOE shall give due consideration to the experience of the agent in providing financial services to minority business enterprises.

(b) If the servicing of the loan is by contract or other agreement, such contract or other agreement shall provide that the loan shall be serviced in accordance with this regulation and with the terms and conditions of the loan, under a standard of performance that a reasonable and prudent lender would require as to its own similar loan. Servicing responsibilities shall include, but not necessarily be limited to, the following:

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

(2) Collection of principal and interest payments on a monthly basis.

(3) Maintenance of records on loan accounts.

(4) Notification of the Secretary, without delay, as to the following:

(i) That the initial disbursement or loan drawdown is ready to be made, together with evidence from the borrower that the bid or proposal preparation has begun or is about to begin.

(ii) The date and amount of each subsequent disbursement under the loan.

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

(iv) Any known failure by the borrower to comply with the terms and conditions of the loan agreement.

(v) Evidence, if any, that the borrower is likely to default on any condition set forth in the loan agreement or

Department of Energy

§ 800.305

may be unable to make the next scheduled payment of principal or interest.

(5) Submittal to DOE of periodic (semi-annual or annual) reports on the status and conditions of the loan and of the borrower.

§ 800.301 Monitoring.

The Secretary shall have the right to audit any and all costs of the bid or proposal for which the loan is sought or made and to exclude or reduce the includible amount of any cost in accordance with § 800.200. Auditors who are employees of the United States Government, who are designated by the Secretary of Energy or by the Comptroller General of the United States, shall have access to, and the right to examine, any directly pertinent documents and records of an applicant or borrower at reasonable times under reasonable circumstances. The servicing agent, if any, shall make information regarding the loan available to the Secretary of Energy and Comptroller General to the extent lawful and within its ability. The Secretary may direct the applicant or borrower to submit to an audit by public accountant or equivalent acceptable to the Secretary.

§ 800.302 Loan limitation.

The Secretary may limit the loan by written notice to the borrower to those amounts, if any, already disbursed under the loan, if the Secretary has determined that the borrower has failed to comply with a material term or condition set forth in the loan agreement.

§ 800.303 Assignment or transfer of loan.

Assignment or transfer of the loan and obligations thereunder may be made only with the prior written consent of the Secretary.

§ 800.304 Default.

(a) In the event that the borrower fails to perform the terms and conditions of the loan, 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 does not constitute an intentional act, but is brought about as a result of circumstances largely beyond the control of the borrower, or is deemed by the Secretary to be insubstantial, 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 mutually acceptable manner.

(e) Should the borrower fail to pay after demand as provided in paragraph (c) of this section, and no deferral or restructuring is agreed to by the Secretary as provided in paragraph (d) of this section, the Secretary shall undertake collection in accordance with the terms of the loan agreement and the applicable law.

§ 800.305 Disclosure.

Information received from an applicant by DOE may be available to the public subject to the provision of 5 U.S.C. 552, 18 U.S.C. 1905 and 10 CFR part 1004; provided that:

(a) Subject to the requirements of law, information such as trade secrets, commercial and financial information, and other information concerning the minority business enterprise that the enterprise submits to DOE in writing, in an application, or at other times throughout the duration of the loan on a privileged or confidential basis, will not be disclosed without prior notice to submitter in accordance with DOE regulations concerning public disclosure of information. Any submitter asserting that the information is privileged or confidential should appropriately identify and mark such information.

(b) Upon a showing satisfactory to the Secretary that any information or portion thereof obtained under this