

Subpart B—Standby Support Contract Process**§ 950.10 Conditional agreement.**

(a) *Purpose.* The Department and a sponsor may enter into a Conditional Agreement. The Department will enter into a Standby Support Contract with the first six sponsors to satisfy the specified conditions precedent for a Standby Support Contract if and only if all funding and other contractual, statutory and regulatory requirements have been satisfied.

(b) *Eligibility.* A sponsor is eligible to enter into a Conditional Agreement with the Program Administrator after the sponsor has submitted to the Department the following information but before the sponsor receives approval of the combined license application from the Commission:

(1) An electronic copy of the combined license application docketed by the Commission pursuant to 10 CFR part 52, and if applicable, an electronic copy of the design certification or early site permit, or environmental report referenced or included with the sponsor's combined license application;

(2) A summary schedule identifying the projected dates of construction, testing, and full power operation;

(3) A detailed business plan that includes intended financing for the project including the credit structure and all sources and uses of funds for the project, the most recent private credit rating or other similar credit analysis for project related covered financing, and the projected cash flows for all debt obligations of the advanced nuclear facility which would be covered under the Standby Support Contract;

(4) The sponsor's estimate of the amount and timing of the Standby Support payments for debt service under covered delays; and

(5) The estimated dollar amount to be allocated to the sponsor's covered costs for principal or interest on the debt obligation of the advanced nuclear facility and for incremental costs, including whether these amounts would be different if the advanced nuclear facility is one of the initial two reactors or one of the subsequent four reactors.

(c) The Program Administrator shall enter into a Conditional Agreement with a sponsor upon a determination by the Department that the sponsor is eligible for a Conditional Agreement, the information provided by the sponsor under paragraph (b) of this section is accurate and complete, and the Conditional Agreement is consistent with applicable laws and regulations.

EFFECTIVE DATE NOTE: At 71 FR 46325, Aug. 11, 2006, §950.10 was revised, effective Sept. 11, 2006. Paragraph (b) of this text contains information collection and recordkeeping requirements and will not become effective until approval has been given by the Office of Management and Budget.

§ 950.11 Terms and conditions of the Conditional Agreement.

(a) *General.* Each Conditional Agreement shall include a provision specifying that the Program Administrator and the sponsor will enter into a Standby Support Contract provided that the sponsor is one of the first six sponsors to fulfill the conditions precedent specified in §950.12, subject to certain funding requirements and limitations specified in §950.12 and any other applicable contractual, statutory and regulatory requirements.

(b) *Allocation of Coverage.* Each Conditional Agreement shall include a provision specifying the amount of coverage to be allocated under the Standby Support Contract to cover principal or interest costs and to cover incremental costs, including a provision on whether the allocation shall be different if the advanced nuclear facility is one of the initial two reactors or one of the subsequent four reactors, subject to paragraphs (c) and (d) of this section. A sponsor may elect to allocate 100 percent of the coverage to either the Program Account or the Grant Account.

(c) *Funding.* Each Conditional Agreement shall contain a provision that the Program Account or Grant Account shall be funded in advance of execution of the Standby Support Contract and in the following manner, subject to the conditions of paragraphs (d) and (e) of this section. Under no circumstances will the amount of the coverage for payments of principal or interest under a Standby Support Contract exceed 80

§ 950.11

10 CFR Ch. III (1–1–11 Edition)

percent of the total of the financing guaranteed under that Contract.

(1) The Program Account shall receive funds appropriated to the Department, loan guarantee fees, or a combination of appropriated funds and loan guarantee fees that are in an amount equal to the loan costs associated with the amount of principal or interest covered by the available indemnification. Loan costs may not be paid from the proceeds of debt guaranteed or funded by the Federal government. The parties shall specify in the Conditional Agreement the anticipated amount or anticipated percentage of the total funding in the Program Account to be contributed by appropriated funds to the Department, by the sponsor, by a non-federal source, or by a combination of these funding sources. Covered costs paid through the Program Account are backed by the full faith and credit of the United States.

(2) The Grant Account shall receive funds appropriated to the Department, funds from a sponsor, funds from a non-Federal source, or a combination of appropriated funds and funds from the sponsor or other non-Federal source, in an amount equal to the incremental costs. The parties shall specify in the Conditional Agreement the anticipated amount or anticipated percentage of the total funding in the Grant Account to be contributed by appropriated funds to the Department, by the sponsor, by a non-Federal source, or by a combination of these funding sources.

(d) *Reconciliation.* Each Conditional Agreement shall include a provision that the sponsor shall provide no later than ninety (90) days prior to execution of a Standby Support Contract sufficient information for the Program Administrator to recalculate the loan costs and the incremental costs associated with the advanced nuclear facility, taking into account whether the sponsor's advanced nuclear facility is one of the initial two reactors or the subsequent four reactors.

(e) *Limitations.* Each Conditional Agreement shall contain a provision that limits the Department's contribution of Federal funding to the Program Account or the Grant Account to only those amounts, if any, that are appropriated to the Department in advance

of the Standby Support Contract for the purpose of funding the Program Account or Grant Account. In the event the amount of appropriated funds to the Department for deposit in the Program Account or Grant Account is not sufficient to result in an amount equal to the full amount of the loan costs or incremental costs resulting from the allocation of coverage under the Conditional Agreement pursuant to 950.11(b), the sponsor shall no later than sixty (60) days prior to execution of the Standby Support Contract:

(1) Notify the Department that it shall not execute a Standby Support Contract; or

(2) Notify the Department that it shall provide the anticipated contributions to the Program Account or Grant Account as specified in the Conditional Agreement pursuant to 950.11(c)(1). The sponsor shall have the option to provide additional funds to the Program Account or Grant Account up to the amount equal to the full amount of loan costs or incremental costs. In the event the sponsor does not provide sufficient additional funds to fund the Program Account or the Grant Account in an amount equal to the full amount of loan costs or incremental costs, then the amounts of coverage available under the Standby Support Contract shall be reduced to reflect the amounts deposited in the Program Account or Grant Account. If the sponsor elects less than the full amount of coverage available under the law, then the sponsor shall not have recourse against, and the Department is not liable for, any claims for an amount of covered costs in excess of that reduced amount of coverage or the amount deposited in the Grant Account upon execution of the Standby Support Contract, notwithstanding any other provision of law.

(f) *Termination of Conditional Agreements.* Each Conditional Agreement shall include a provision that the Conditional Agreement remains in effect until such time as:

(1) The sponsor enters into a Standby Support Contract with the Program Administrator;

(2) The sponsor has commenced construction on an advanced nuclear facility and has not entered into a Standby

Department of Energy

§ 950.12

Support Contract with the Program Administrator within thirty (30) days after commencement of construction;

(3) The sponsor notifies the Program Administrator in writing that it wishes to terminate the Conditional Agreement, thereby extinguishing any rights or obligations it may have under the Conditional Agreement;

(4) The Program Administrator has entered into Standby Support Contracts that cover three different reactor designs, and the Conditional Agreement is for an advanced nuclear facility of a different reactor design than those covered under existing Standby Support Contracts; or

(5) The Program Administrator has entered into six Standby Support Contracts.

§ 950.12 Standby Support Contract Conditions.

(a) *Conditions Precedent.* If Program Administrator has not entered into six Standby Support Contracts, the Program Administrator shall enter into a Standby Support Contract with the sponsor, consistent with applicable statutes and regulations and subject to the conditions set forth in paragraphs (b) and (c) of this section, upon a determination by the Department that all the conditions precedent to a Standby Support Contract have been fulfilled, including that the sponsor has:

(1) A Conditional Agreement with the Department, consistent with this subpart;

(2) A combined license issued by the Commission;

(3) Documentation that it possesses all Federal, State, or local permits required by law to commence construction;

(4) Documentation that it has commenced construction of the advanced nuclear facility;

(5) Documented coverage of insurance required for the project by the Commission and lenders;

(6) Paid any required fees into the Program Account and the Grant Account, as set forth in the Conditional Agreement and paragraph (b) of this section;

(7) Provided to the Program Administrator, no later than ninety (90) days prior to execution of the contract, the

sponsor's detailed schedule for completing the inspections, tests, analyses and acceptance criteria in the combined license and informing the Commission that the acceptance criteria have been met; and the sponsor's proposed schedule for review of such inspections, tests, analyses and acceptance criteria by the Commission, consistent with § 950.14(a) of this part and which the Department will evaluate and approve; and

(8) Provided to the Program Administrator, no later than ninety (90) days prior to execution of the contract, a detailed systems-level construction schedule that includes a schedule identifying projected dates of construction, testing and full power operation of the advanced nuclear facility.

(9) Provided to the Program Administrator, no later than ninety (90) days prior to the execution of the contract, a detailed and up-to-date plan of financing for the project including the credit structure and all sources and uses of funds for the project, and the projected cash flows for all debt obligations of the advanced nuclear facility.

(b) *Funding.* No later than thirty (30) days prior to execution of the contract, and consistent with section 638(b)(2)(C), funds in amounts determined pursuant to § 950.11(e) have been made available and shall be deposited in the Program Account or the Grant Account respectively.

(c) *Limitations.* The Department shall not enter into a Standby Support Contract, if:

(1) *Program Account.* The contract provides coverage of principal or interest costs for which the loan costs exceed the amount of funds deposited in the Program Account; or

(2) *Grant Account.* The contract provides coverage of incremental costs that exceed the amount of funds deposited in the Grant Account.

(d) *Cancellation by Abandonment.* (1) If the Program Administrator cancels a Standby Support Contract for abandonment pursuant to 950.13(f)(1), the Program Administrator may re-execute a Standby Support Contract with a sponsor other than a sponsor or that sponsor's assignee with whom the Department had a cancelled contract, provided that such replacement Standby