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DOE Issues Final Solicitation for its $4 Billion Loan Guarantee Program for Renewable Energy and Efficient Energy Projects

On July 3, 2014, the Department of Energy's Loan Program Office ("DOE") announced the Final Renewable Energy and Energy Efficiency Projects Solicitation ("Solicitation") for its up to $4 billion loan guarantee program under Section 1703 of Title XVII of the Energy Policy Act of 2005. The program provides long-term financing for innovative broadly-defined clean energy projects that reduce greenhouse gas ("GHG") emissions and are located in the United States. The Solicitation finalized the Draft Solicitation that had been published on April 16, 2014 ("Draft Solicitation") and following DOE's review of numerous comments from the industry and interested participants ("Comments").

> The Solicitation may be accessed by clicking here: http://1.usa.gov/1ss9hxI. The Comments may be accessed by clicking here: http://1.usa.gov/1q1JVcU. Our legal alert published on April 21, 2014 analyzing the Draft Solicitation may be accessed by clicking here: http://bit.ly/1jsgGH1.

Project Eligibility

Under this Solicitation, DOE is seeking to support innovative clean energy projects that meet the following eligibility criteria:

- be located in the United States;
- use one of the following technologies:
  - renewable energy systems;
  - efficient electrical generation, transmission, and distribution technologies; or
  - efficient end-use energy technologies.
- avoid, reduce, or sequester anthropogenic emission of GHG; and
- employ New or Significantly Improved Technologies, as compared to Commercial Technology in service in the United States, at the time the term sheet is issued, as these terms are defined under 10 CFR Part 609.

A technology will be considered Commercial Technology if it is in general use in the commercial marketplace in the U.S. at the time the term sheet is issued by the DOE. A technology will be considered in general use if it has been installed and is used in 3 or more commercial projects in the U.S. in the same general application as in the proposed project, and has been in operation in each such commercial project for at least 5 years by the time the term sheet is issued.

A New or Significantly Improved Technology is a technology that is not a Commercial Technology, and that has been: (i) only recently developed, discovered, or learned; or (ii) involves or constitutes meaningful and important improvements to the Commercial Technology in use in the U.S. at the time the term sheet is issued.

In response to Comments requesting clarification on GHG assessment, DOE announced its intent to conduct a Life Cycle Assessment ("LCA") of each project's GHG impact. DOE will develop and release a guidance document to define the methodologies, data requirements, and major assumptions for all LCAs under this Solicitation.

In response to Comments on location for bundled distributed generation sites, DOE announced that it may consider an application for a project situated in multiple locations, so long as the separate locations are integral components of a unitary plan and important to the viability of the project. An applicant seeking funding for a project with multiple locations must justify its approach.

Catalytic Technologies

To foster further development of clean energy technology, DOE will view favorably projects that demonstrate their catalytic effect on the commercial deployment of future renewable energy or energy efficiency projects that replicate or extend the innovating features of such eligible project.

The Solicitation identifies types of projects that DOE has determined will have a catalytic effect, as listed below. However, the list of such types of projects is not intended to be limiting or exclusive.

Advanced Grid Integration and Storage

- Renewable energy generation, including distributed generation, incorporating storage;
- Smart grid systems, incorporating any combination of demand response, energy efficiency, sensing, and storage to enable greater penetration of renewable generation;
- Micro-grid projects that reduce carbon monoxide emissions at a system level; and
- Storage projects that clearly enable greater adoption of renewable generation.

Drop-In Biofuels

- New bio-refineries that produce gasoline, diesel fuel, or jet fuel;
- Bio-crude refining processes; and
- Modifications to existing ethanol facilities to gasoline, diesel fuel, or jet fuel.

Waste-to-Energy

- Methane from landfills or ranches via biodigesters to heat and power;
- Municipal solid waste to electricity;
- Crop waste to fuel and/or energy and bioproducts; and
- Forestry waste to fuel and/or energy potentially via co-firing.

Enhancement of Existing Facilities

- Incorporation of power production into currently non-powered dams;
- Inclusion of variable speed pump-turbines into existing hydro facilities; and
- Retrofitting existing wind turbines.

Efficiency Improvements

- Improve or reduce energy usage in residential, institutional, and commercial facilities, buildings, or processes;
- Recover, store, or dispatch energy from curtailed or underutilized renewable energy sources;
- Recover, store, or dispatch waste energy from thermal, mechanical, electrical, chemical, or hydro-processes; and
- Dispatch, control, or stabilize intermittent power to large transmission lines, smart grids, and micro-grids.

Funding

Under the Solicitation, DOE makes available $2.5 billion in loan guarantee authority, plus an additional $169 million in appropriated credit subsidy authority and an imputed loan guarantee authority, with an amount of up to $4 billion in total loan guarantee support.

The program is not subject to any statutory or regulatory dollar limit for any single project. However, DOE views favorably the use of partial guarantees and co-lending arrangements. Loan guarantees can support debt from either a commercial or other qualified lender or the Federal Finance Bank at the U.S. Department of Treasury.

Loan Guarantee Percentage of Project Cost

Under the regulations (42 U.S. Code 16512 (c)), DOE may provide a loan guarantee of up to 80% of the total project costs, without a cap, but subject to available program funds.

In practice, however, most projects receive loan guarantees at a maximum of 65% or a lesser percentage of the total project costs. In fact, historically, DOE has not guaranteed more than 70% of the total project costs.

Notwithstanding the level of a DOE loan guarantee, the remaining balance of project costs must be funded by equity (including tax equity, such as Investment Tax Credits and New Market Tax Credits), state grants, subordinated debt, and other financing mechanisms.

Credit-Based Interest Rate Spread

On July 9, 2014, DOE announced that a credit-based interest rate spread will be added to certain loans under Title XVII of the Energy Policy Act of 2005 ("Title XVII"). The Solicitation was authorized by Title XVII and, therefore, the credit-based interest rate spread will apply to clean energy projects, along with all other applications made under Section 1703 of Title XVII.

The announcement may be accessed here: http://1.usa.gov/1mDApJ0.

Loans that are issued by the Federal Financing Bank ("FFB") and backed by a 100% DOE loan guarantee will be subject to a new credit-based interest rate spread, as follows:

Project Credit Rating	Credit-Based Interest Rate Spread (%)	Final FFB Interest Rate Spread (%)
AAA	0.000	0.375
AAA-	0.000	0.375
AA+	0.000	0.375
AA	0.000	0.375
AA-	0.035	0.410
A+	0.075	0.450
A	0.115	0.490
A-	0.185	0.560
BBB+	0.265	0.640
BBB	0.335	0.710
BBB-	0.525	0.900
BB+	0.725	1.100

Project Credit Rating	Credit-Based Interest Rate Spread (%)	Final FFB Interest Rate Spread (%)
BB	0.925	1.300
BB-	1.125	1.500
B+	1.295	1.670
B	1.475	1.850
B-	1.625	2.000

The tenor of a FFB loan and term of a DOE loan guarantee may be up to 30 years, but typically range between 12 and 20 years. The tenor is a key factor in the calculation of the interest rate applicable to the FFB loan. Interest rates charged to loans issued by the FFB will be computed as follows:

Interest Rate = U.S. Treasury Rate then-in effect for the loan tenor + 37.5 basis points FFB liquidity spread + credit-based interest rate spread.

Credit Subsidy Costs

DOE has available $169,660,000 to cover credit subsidy costs associated with its programs, including but not limited to, this Solicitation. Credit subsidy costs under this Solicitation shall be paid as follows:

Credit subsidy cost at or below 7%	Credit subsidy cost exceeding 7%	
Paid entirely by applicant	First 7% paid entirely by applicant	Any amount above 7% paid by DOE, up to a total of $17 million per project

DOE advises that the credit subsidy cost of projects that already benefit from some limited federal support ("Federally Supported Projects") may be substantially higher than the credit subsidy cost of an equivalent project that is not a Federally Supported Project. Examples of Federally Supported Projects include projects that are sponsored, owned, or controlled by Federal entities, or are dependent on Federal offtake.

Credit subsidy costs are non-refundable, due and payable at financial closing. Credit subsidy costs that are borne by the applicant cannot be covered under this program's loan guarantee or any other federal government funds. As such, the applicant must commit additional funds above and beyond the equity already committed to the project.

In response to Comments, DOE clarified that credit subsidy costs are calculated by DOE together with the Office of Management and Budget, and are based on two key factors: (1) probability of default; and (2) the potential recovery after default.

Application Process

The application consists of two submissions, Part I and Part II. Part I submission determines the initial eligibility of a project for funding, while the Part II submission includes completion of the full application and due diligence process. Only applicants for projects that are deemed eligible based on DOE's Part I review may be invited to submit Part II of the application.

- Part I review will include an evaluation of whether the project is responsive to the requirements of the Solicitation. In addition to project eligibility requirements, a Part I application must demonstrate that the project provides a reasonable prospect of repayment of the principal and interest, has sufficient funds to be built and operate, and is not benefitting from certain other federal assistance.

- Part II review will include a determination of the project's viability based on financial, technical, and programmatic factors. DOE will conduct a more detailed, weighted review of a Part II application, which will include thorough due diligence of the project.

Viable projects that are granted a conditional commitment will then undergo the complete underwriting process and negotiation of terms for the loan guarantee.

In response to Comments, DOE clarified that although the Solicitation requires that a project have a reasonable prospect of repayment, it is not required to have long-term, fixed price, or take-or-pay arrangements. Applicants who sell in the spot market are encouraged to propose creative solutions. DOE ultimately is seeking not only to have its guarantees repaid, but to enable projects under this program to be successful.

For the first time, applicants will be able to submit applications online through an application portal.

Fees

Each applicant must pay non-refundable application fees, facility fees, and maintenance fees, as summarized below. These fees must be borne by the applicant and cannot be covered under this program's loan guarantee or any other federal government funds.

In response to numerous Comments advocating lower fees for small projects, DOE advised that, in contrast with previous solicitations, the fees under this Solicitation have been restructured to reflect the size of the project.

Application Fee

The total application fee for the application is targeted at between $150,000 and $400,000, payable in two installments, as follows:

Payable upon submission of:	For senior debt at or less than $150 million	For senior debt exceeding $150 million
Part I of the application	$50,000	$50,000
Part II of the application	$100,000	$350,000

Facility Fee

The facility fee ranges from 1% to 1.6% of senior debt, depending on the amount of senior debt:

For senior debt at or less than $150 million	For senior debt exceeding $150 million
1%	1% for the first $150 million plus 0.60% for any amount exceeding $150 million

The facility fee is payable in two installments: 25% upon the applicant's execution of a DOE-approved term sheet, and 75% upon financial closing.

Maintenance Fee

The maintenance fee covers DOE's administrative expenses in servicing and monitoring the loan guarantee, starting with the borrower's execution of the Loan Guarantee Agreement and through payment in full. It is expected to be up to $500,000 per calendar year, based upon the requirements of a specific project. The maintenance fee is payable annually in advance.

Application Deadlines

Unlike the Advanced Fossil Energy Projects Solicitation where DOE provides 6 rounds of funding, the Solicitation instead provides 5 rounds of funding. The first deadline for filing Part I of the application is October 1, 2014, and the first deadline for filing Part II of the application is January 14, 2015. Following these initial deadlines, there are rolling Part I and Part II deadlines as follows:

Rounds	Part I deadline	Part II deadline
1	October 1, 2014	January 14, 2015
2	December 3, 2014	March 11, 2015
3	April 1, 2015	July 1, 2015
4	August 5, 2015	November 4, 2015
5	December 2, 2015	March 2, 2016

To learn more and discuss the parameters of this Solicitation, please contact the authors of this alert:

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