



DOE Issues Loan Guarantee Program for Commercial Technology Renewable Energy Generation Projects

Overview

Nearly eight months after passage of the American Recovery and Reinvestment Act of 2009 (“Recovery Act”) and its promulgation of Section 1705 of Title XVII of the Energy Policy Act of 2005 (“Energy Policy Act”) authorizing Department of Energy (“DOE”) loan guarantees for commercial technology renewable energy generation projects, on October 7, 2009 the DOE issued its solicitation for applications for these loan guarantees. Through the creation of the Financial Institution Partnership Program (“FIPP”), the DOE will make up to \$750,000,000 authorized by the Recovery Act available to pay the related credit subsidy cost of loan guarantees for eligible projects and help accelerate their development. FIPP is intended to expedite the DOE’s loan guarantee underwriting process, expand senior credit capacity and leverage expertise and capital in order to efficiently fund eligible projects. This solicitation invites the submission of applications by eligible lenders of loans to be guaranteed by the DOE.

Eligibility

Projects Covered.

Only renewable energy systems that generate electricity or thermal energy by using technology in general use in any commercial marketplace are eligible under this solicitation. The DOE will guaranty to eligible lenders the payment of up to 80 percent of the maximum aggregate principal amount of and interest on the loans being guaranteed. Construction of the project being financed must commence on or before September 30, 2011, meet all applicable requirements of Title XVII of the Energy Policy Act (which otherwise pertains to incentives for innovative technologies) and have an expected credit rating from a nationally recognized rating agency of at least the equivalent of ‘BB’ from Standard & Poor’s or Fitch or ‘Ba2’ from Moody’s. The DOE will not issue loan guarantees to refinance projects that have already been fully financed or for which construction is complete. The DOE has provided the following nonexclusive listing of potential types of eligible projects:

- Wind facilities;
- Closed-loop biomass facilities;
- Open-loop biomass facilities;
- Geothermal facilities;
- Landfill gas facilities;
- Trash-to-energy facilities;
- Hydropower facilities, including incremental hydropower; and
- Solar facilities.

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Eligible Lenders.

In order to participate in FIPP, an applicant (“Lender-Applicant”) must be a financial institution, or one of a group of financial institutions, engaged in the business of lending money that satisfies the requirements of a “Lead Lender” by meeting the following criteria:

- Not debarred or suspended from participation in a Federal government contract or non-procurement activity;
- Not delinquent on any Federal debt or loan;
- Legally authorized to enter into loan guarantee transactions authorized by Title XVII of the Energy Policy Act and in good standing with the DOE and other Federal agency loan guarantee programs;
- Able to demonstrate experience in originating and servicing loans for commercial projects similar in size and scope to the project under consideration; and
- Able to demonstrate experience or capability as the lead lender or underwriter by presenting evidence of its participation in large commercial projects or energy-related projects, or other relevant experience.

A Lender-Applicant will be required to provide certain certifications and assurances to the DOE pertaining to lobbying, debarment, suspension and other responsibility matters. Furthermore, the Lender-Applicant, as Lead Lender, will have continuing obligations to the DOE pertaining to the monitoring of the project and servicing of the loan being guaranteed.

Contemplated Structure.

Guaranteed obligations under this FIPP solicitation are to be limited to traditional senior secured debt structures with standard market terms that are traditionally applicable to long term energy project finance transaction and not altered to accommodate tax-oriented investment structures. While this restriction does not prohibit tax equity structures per se, it is not clear what terms commonly requested by tax equity investors (including forbearance and extended cure rights) will be acceptable to the DOE as “standard”.

Application Process and Evaluation by DOE

The application process will consist of the Lender-Applicant providing a two-part submission to the DOE:

Part I Submission.

The Part I submission will provide the DOE with a description of the project to be financed and a summary of its creditworthiness, eligibility under the FIPP solicitation, financing strategy and compliance of the proposed funding plan with the objectives of the FIPP solicitation, progression to date in critical path activities,

and readiness to proceed and commence construction. It will also describe the Lender-Applicant’s ability to be a Lead Lender. The Part I submission may be filed at any time.

After receipt of a Part I submission, the DOE will review the materials provided by the Lender-Applicant in order to determine that the project to be financed meets certain threshold criteria (including, but not limited to, being built and operated in the United States, utilizing technology generally used commercially in the United States and yielding a commercially viable product), that the Lender-Applicant meets the requirements of a Lead Lender, that the proposed project constitutes an Eligible Project, that the project is likely to commence construction by September 30, 2011, and that the proposed project is expected to meet the other objectives and parameters of the FIPP solicitation.

Part II Submission.

The Part II submission is to be filed by the Lender-Applicant only after notification from the DOE with respect to the Part I submission and is to include a more detailed description of the scope of the project to be financed including, among other things, key milestones, location, identification of the technologies to be employed in the project and how the proposed Borrower intends to employ such technologies. Additionally, the submission should include a detailed explanation of how the project is eligible to participate in FIPP, an estimate of project costs along with the methodology and assumptions used and a detailed description of the overall financial plan, a detailed description of schedules of the engineering, construction and design contractors, a detailed description of the management plan of operations and the project decommissioning, deconstruction and disposal plan. The Part II submission can be submitted on any of 10 due dates, beginning on November 23, 2009 and ending on January 6, 2011. Most importantly to note is that all Part II submissions filed during a particular round will be competitively evaluated against all filings submitted that round. The DOE has expressly stated that Lender-Applicants who submit in earlier rounds enjoy a first mover’s advantage in the order of priority of review.

The evaluation of the Part II submission by the DOE is based on the following criteria:

- Programmatic: Readiness of project for financing, likely speed to closing, size, simplicity of project and financing structures, legal and regulatory factors;
- Creditworthiness: Financial strength of project, with emphasis on security of revenues and expenses; and
- Financing and Funding Plan: Ability of the Lender-Applicant to successfully execute financing and funding plan.

The DOE will perform its review assuming that the Lender-Applicant has analyzed the proposed project as if the obligations were not going to be partially guaranteed by the DOE and has followed its own standard internal credit policies and procedures for comparable senior debt transactions, including evaluating the financing plan, assessing the financial viability of the project, determining the technical efficacy, reviewing the project legal structure, evaluating the project risks, performing financial model review and stress-testing, assessing strengths and weaknesses of project sponsors and analyzing proposed collateral.

Term Sheet and Conditional Commitment

After review of the Part II submission, the DOE may provide the Lender-Applicant with a term sheet which is expected to be based on the term sheet proposed by the Lender-Applicant in its Part II submission and will contain detailed terms and conditions that must be met by the Lender-Applicant and the Borrower. The issuance or negotiation of a term sheet is not a commitment by the DOE to issue a loan guarantee. If the DOE and the Lender-Applicant negotiate and execute a final term sheet, it becomes a conditional commitment. The Secretary of Energy may terminate a conditional commitment for any reason and at any time prior to the execution of a definitive Loan Guarantee Agreement.

Lender-Applicants not offered a term sheet will be informed in writing of the reason of the DOE's decision not to proceed. Any such decision will be final and non-appealable.

Closing

Loan Guarantee Agreement.

The Loan Guarantee Agreement will be entered into at closing among the DOE, the Lender-Applicant, each holder of a direct interest as a lender in the guaranteed obligations and the administrative agent. The Loan Guarantee Agreement will set out terms and conditions of the DOE's loan guarantee and is non-negotiable by the Lender-Applicant. The Lender-Applicant and other participating financial institutions will rank *pari passu* with one another with respect to payments and collateral under the Loan Agreement, though the DOE will have the right to control most actions, including defaults, remedies and amendments.

Loan Agreement.

The Loan Agreement will be entered into at closing among the DOE, the Borrower, the Lender-Applicant and each holder of a direct interest as a lender in the guaranteed obligations. The Loan Agreement is to include language stating that, in the event of default by the Borrower, (i) interest will accrue on the guaranteed obligations at a rate stated therein until the DOE makes the full

payment of the defaulted guaranteed obligations to the extent of the DOE loan guarantee, (ii) upon payment of the guaranteed obligations by the DOE, the DOE is subrogated to the rights of the holders of the debt, (iii) the Lender-Applicant is obligated to take actions necessary to secure the guaranteed obligations on a first priority basis, and (iv) counter to other DOE loan guarantee programs in the past, the claims of the holders and the DOE will be *pari passu*. It must also contain certain terms and conditions specifically described in the FIPP solicitation pertaining to, among other things, Lender-Applicant participation, loan structure, voting rights, remedies and DOE fees and expenses.

Fees

The application fee under the solicitation is \$50,000, with \$12,500 payable by the Lender-Applicant at the time of the Part I submission and \$37,500 payable at the time of the Part II submission.

There is also a facility fee in the amount of $\frac{1}{2}$ of 1.0 percent of the guaranteed portion of the guaranteed obligations, of which 20 percent will be payable by the Lender-Applicant upon the signing of a term sheet with the remaining 80 percent payable at closing.

Finally, there is a maintenance fee expected to be in the range of \$10,000 to \$25,000 per year to be payable by the Borrower as specified in the Loan Guarantee Agreement.

Additional Requirements

Davis Bacon Act Requirements.

The Borrower, as a recipient of the DOE loan guarantee, must assure the DOE that all laborers and mechanics used on the applicable project are to be paid at rates not less than those prevailing in similar work in a similar location. This will require the Borrower to make certain representations, warranties and covenants in the Loan Agreement as to its compliance with the Davis Bacon Act.

National Environmental Policy Act Requirements.

A Lender-Applicant must provide an analysis of the potential environmental impacts of the project to allow the DOE to determine whether the project will comply with the applicable governmental requirements. The DOE has indicated that projects requiring an environmental impact study will not likely receive a loan guarantee as the procurement of such a study would not be achievable within the time frame of the program. As a critical path item, feedback from the DOE on the necessity of such a study, as opposed to the less onerous environmental assessment, is expected prior to submission of Part II of the application.

Recovery Act Reporting Requirements.

The Borrower, as a recipient of the DOE loan guarantee, will be required to report the number of jobs created and retained by the applicable project ten days after the end of each calendar quarter.

Buy American Provisions.

The Recovery Act prohibits the use of appropriated funds for the construction or repair of a public building or public work unless all iron, steel and manufactured goods used in the project are produced in the United States. As such, the Borrower will be required to represent at the time of closing that the project is not a “public building” or “public work” as defined in the Recovery Act.

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