



U.S. Department of Energy Loan Guarantee Program: Commercial Renewable Energy Generation Project Solicitation

On October 7, 2009, the U.S. Department of Energy (DOE) released a solicitation (Solicitation Number DE-FOA-0000166) under Section 1705 of the Title XVII loan guarantee programs for “Commercial Renewable Energy Generation Projects.” Section 1705 was created by the American Recovery and Reinvestment Act (ARRA, a.k.a. the economic stimulus bill).

To follow is a summary of key provisions in the solicitation. The solicitation and rules are available online [here](#).

Questions can be directed to:

Email: DOEHelpDesk@USAEA-Connect.com (Subject line must include “RE CMCL TECH RENEW Solicitation Question” and a few words identifying the topic of the question)
Telephone: 614-324-5940
Internet: www.lgprogram.energy.gov

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Summary

Section 1705 of Title XVII allows DOE to support debt financing for commercial renewable technologies. The initial solicitation is limited to renewable generation projects. Manufacturers are not eligible. The solicitation does indicate that DOE

anticipates issuing a future solicitation for manufacturers of renewable energy system components.

The solicitation provides \$750 million for DOE to pay the credit subsidy costs, which DOE expects to support between \$4 billion and \$8 billion in commercial lending. This funding level is disappointing. Congress transferred \$2 billion from the DOE loan guarantee programs to extend the cash for clunkers program this summer. That action resulted in less money being available for the commercial solicitations. It is possible that DOE could amend this solicitation at a later date to add funding if Congress was to restore the \$2 billion as the President and congressional leaders have promised to do.

Under this program, the renewable developers do not actually apply directly to DOE. Instead, the project developer works directly with an eligible lender who then applies to DOE for the guarantee. The lenders perform the due diligence and underwriting. This process is known as the Financial Institution Partnership Program (FIPP).

Guarantees are limited to 80% of the maximum aggregate principle and interest during the loan term.

Applications will be accepted in ten rounds. Within a round, applications will be weighed competitively against other applications.

Recipients must pay prevailing wages ("Davis-Bacon") on the project being supported.

Environmental review will be required under the National Environmental Policy Act (NEPA). The solicitation indicates that projects requiring a full environmental impact statement (EIS) will likely not be able to compete successfully for a loan guarantee due to the time it takes to do an EIS and the requirement that projects commence construction by September 30, 2011.

Guaranteed portion may be "stripped" from the non-guaranteed portion.

Eligibility

Project must involve a commercial technology. A commercial technology is a technology "in general use in the market place." This phrase is defined as "installed in and is being used in three or more commercial projects anywhere in the same or substantially similar general application as in the proposed project, and has been in operation in each such commercial project for a period of at least two years." (Page 78-79 of the solicitation)

Project must have a "reasonable prospect of repayment."

Must be able to “commence construction” by September 30, 2011. Commence construction is defined as completing all pre-construction engineering and design; having all necessary licenses, permits and local and national environmental clearances; engaged all contractors and ordered all essential equipment such that physical construction may begin and proceed to completion without foreseeable interruption. (Page 9) If a project fails to commence construction, DOE cannot enter into a loan guarantee agreement and must terminate any outstanding LGA or conditional commitment.

Projects that have completed construction are not eligible for a loan guarantee (Page 10).

DOE will not issue loan guarantees to support or refinance projects that have already been fully financed (Page 10).

If a project has begun construction before the issuance of a guarantee, it may be eligible for a loan guarantee unless it has received a conditional-commitment for post-construction financing before issuance of the loan guarantee. (Page 10)

Must have a credit rating equivalent to a “BB” from Standard & Poor’s or Fitch or a “Ba2” from Moody’s as evaluated without the benefit of any DOE loan guarantee or any other credit support which would not be available to DOE. (Page 9)

More than one application may be submitted by a Lender-Applicant. (Page 20)

Applications will be denied if (Pages 87-88):

- The project is built or operated outside the U.S.
- The project is not ready to be employed commercially
- The entity issuing the loan is not an eligible lender
- The project is for research, development or demonstration
- The project sponsor does not provide an equity contribution (defined as cash; equity specifically does not include proceeds from non-guaranteed portion of loans, proceeds from other non-guaranteed loans, or the value of any form of government assistance or support)

Project costs are defined in great detail on pages 101-102, both what is included and what is not included. Project costs include property, engineering, equipment purchases, financial and legal services, cost of issuing project debt, among others. Project costs do not include: fees and commissions charged to the borrower, dividends and profits to shareholders, R&D costs, expenses incurred after startup, and operating costs, among others.

FIPP

The FIPP “is intended to expedite the loan guarantee process.” It is built on top of the existing Section 1705 rules, not in place of (Page 6).

The applicant under this solicitation is a financial institution or group of financial institutions that fund and hold all or a portion of the guaranteed obligation.

Each guaranteed obligation is expected to have one lead lender who will act as the administrative agent.

Lenders will be required to share in a significant amount of risk on a pari-passu basis with the DOE as guarantor.

Lenders are expected to “evaluate, and receive credit approval for, the guaranteed obligation in accordance with their standard internal credit policies and procedures for comparable senior debt transactions and as if the guaranteed obligation were not partially guaranteed.”

Lenders will have the lead role in developing the overall financial structure of the proposed program and the specific terms of the guaranteed obligation in the usual and customary manner of a lead lender or underwriter of a senior credit facility.

Qualifications to be a lead lender (the first four also apply to qualifying to be a holder, i.e. participant):

- Not be debarred from federal contracts
- Not be delinquent on any federal debt or loan
- Be legally authorized to enter into Title XVII loan guarantees and be in good standing with DOE and other federal loan guarantee programs
- Be able to demonstrate or have access to experience in originating and servicing loans for commercial projects similar in size and scope to the project under consideration
- Be 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

The guaranteed obligation is “expected to be ‘traditional’ senior secured debt, structure in accordance with customary market terms applicable to a high quality limited or non-recourse long-term, energy project finance transaction and not modified to accommodate tax-oriented investment structures.”

Lender-Applicants are expected to:

- Evaluate the financial plan, including the adequacy, leverage and timing of proposed sources of funding
- Review the terms and rights of various sources of funding and degree of commitment
- Assess adequacy of proposed contingency and reserve funding
- Evaluate guaranteed obligation plan
- Assess financial viability, including the assumptions underlying projected revenues and expenses and the likelihood the assumed technical performance will be achieved
- Conduct a thorough review of the required engineering report
- Review the project's proposed legal structure
- Identify, assess, and estimate impact of risk associated with the project
- Perform model review and stress-testing, the model must be made available to DOE
- Assess strengths and weaknesses of project sponsors, including track record in development and in the specific technology; sponsor's financial strength and resources; strategic value of the project to sponsors; experience and expertise of management team
- Analyze proposed collateral, particularly under default scenarios; must initiate discussions with DOE on a plan of liquidation

Application Process

The application process has four phases:

- (1) Application (subdivided into Parts I and II)
- (2) Project evaluation by DOE
- (3) Term sheet/conditional commitment
- (4) Loan Guarantee Agreement/Closing (Page 12)

DOE will review Part I submissions for project eligibility, readiness to proceed and commence construction, qualifications of the lender, and how the proposed funding plan complies with this solicitation. Lender-Applicant will make a self-selecting decision whether to proceed to Part II based on DOE review in Part I. An applicant may only file Part II after receiving notification from DOE regarding Part I.

Part I and II applications will be reviewed on a continuous basis as soon as they are received. Applicants making submissions in earlier rounds of Part II reviews will enjoy a first mover's advantage in terms of order of priority of review.

Part II submissions will be competitively evaluated against all other Part II submissions during that round.

Pages 83-87 detail 30 different items that need to be included in an application.

Part I Submission Details

Part I is supposed to provide a summary level description of the project, its creditworthiness, eligibility, financing, readiness to proceed to construction etc.

Submission should provide a brief explanation of (Page 36):

- How a project qualifies as a renewable energy system located in the U.S. using a commercial technology
- Identify the technology employed in the project, explain how it constitutes a commercial technology
- The likelihood the project will commence construction by September 30, 2011
- Project sponsor's capabilities, financial strengths and proposed investment in the project
- Estimated total cost of the project and a summary breakdown of key elements of project costs

Part I must also provide sufficient details to enable DOE to determine the level of NEPA review that will be required.

Part I submissions shall also provide (Page 39):

- Summary business plan, including market analysis, construction plan, O&M plan, and project off-take
- Summary financing plan, including timing and amount of funding and repayment of debt, expected equity investments, anticipated funding under the Treasury cash grant program, and a list of federal and non-federal incentives or other assistance on which the project relies, among other requirements

Part II Submission Details

During Part II reviews, communications from Lender-Applicants to DOE are generally not allowed unless responding to DOE's notification to such an applicant, the applicant is seeking administrative assistance, or the applicant is notifying DOE of material changes to the Part II submission.

DOE "shall endeavor to review each Part II submission and inform each Lender-Applicants of its decision within two months from the application submission due date."

At any time during Phase II, DOE may elect to offer a term sheet. The term sheet does not constitute a commitment to offer a loan guarantee. If the Lender and Borrower execute a final term sheet, it becomes a conditional commitment.

The Secretary may terminate a conditional commitment for any reason at any time.

Part II submissions shall include, among other items (Pages 47-57):

- Changes or additions to Part I submission
- List of project parties
- Lender commitment to provide financing necessary to construct and fully commission the project
- Copy of equity commitment letters
- Detailed cost breakdown by cost category, year of expenditure and basis for amounts, description of methodology and assumptions
- Summarize prior experience of each project participant
- Copy of all legal opinions concerning the project
- Identify the proposed project location and rationale for site choice
- Project time lines
- Key contracts and agreements (including EPC, long lead procurements, PUC agreements or decisions, O&M contracts)
- Engineering and construction plans
- O&M plans
- Permits and approvals
- Engineer's report
- Environmental report
- Insurance coverage
- Financial model and analysis
- Market analysis
- Project Offtake
- Operational risks and mitigation plans
- Types of jobs created/retained, estimated jobs created/retained
- Legal structures
- Sources of funds
- Proposed term sheet
- Financial statements
- Credit history
- Collateral
- Financing documents

Physical Submission Rules

Applicants must submit their applications online via FedConnect. Instructions on how to register and submit can be found at www.fedconnect.net Two signed paper copies must also be submitted to:

U.S. DOE Loan Guarantee Program
c/o USA Energy Advisors

Attn: DOE Commercial Renewable Energy Generation Solicitation
919 Henderson Road
Columbus, OH 43220-3722

Applicants must complete the following:

- Obtain a Dun and Bradstreet Data Universal Numbering System (“DUNS”) number,
- Obtain a North American Industry Classification (“NAIC”) number,
- Register with the Central Contract Registration (“CCR”), and
- Register with FedConnect.

Applicants are highly encouraged to allow at least 21 days to complete the steps above.

Deadlines

Part I submissions may be filed at any time prior to Part II submissions.

There will be ten rounds of Part II submissions. Part II submissions must be filed by 11:59 p.m. ET on any of the following due dates:

November 23, 2009
January 7, 2010
February 22, 2010
April 8, 2010
May 24, 2010
July 8, 2010
August 23, 2010
October 7, 2010
November 22, 2010
January 6, 2011

Review Process and Criteria

In evaluating the application, DOE will consider three factors with the following weighting:

(1) Programmatic 35%

Readiness of a project for financing, likely speed to closing, size for the project, simplicity of project and financing structures, legal and regulatory factors (including permitting and public acceptance) that could jeopardize the success of the project, taking into account offsetting mitigation factors, among other factors.

(2) Creditworthiness 45%

Economic viability without the loan guarantee, sufficiency of cash flow, availability of other federal or state incentives, credibility of business and financial plans, sponsor capability and financial strength, market factors that could influence the success of the project, risk of cost overruns, amount of funding from other project sources, among other factors.

(3) Financing and funding plan 20%

Greater weight will be given to applications that rely upon a smaller guaranteed percentage, all else being equal.

DOE will also review the extent to which the “buy and hold” intention is co-aligned with DOE’s long-term risk exposure.

“Applications that contemplate second-lien financing will be disfavored.”

Pages 88-89 of the solicitation provides additional details on review criteria, noting that DOE will consider the following factors, among others:

- To what extent the project employs a commercial technology
- The extent to which the requested amount of the loan guarantee is reasonable relative to the nature and scope of the project
- The total amount and nature of eligible project costs
- Amount of equity commitment to the project by the proposed borrower and other principles
- Whether and to what extent the borrower will rely on other federal aid
- The likelihood the project will provide sufficient revenues
- The level of safeguards provided to the government in the event of default
- Levels of market, regulatory, legal, financial, and technological risk

DOE has the right to utilize independent consultants in the review process. Applicants are responsible for paying all fees associated with independent consultant engaged by DOE.

Applicants will be notified in writing by DOE of a decision not to proceed with the application. The DOE determination shall be final and non-appealable. But, it will not prejudice application from filing Part I and II applications for different projects or applying under a future solicitation.

Fees

1. Application fee - \$50,000 paid by the Lender. First portion \$12,500 (25%) is due upon submission of Part I application. Second portion \$37,500 (75%) is due upon submission of Part II application. Application fees are non-refundable.
2. Facility fee – paid by the Lender. ½ of 1% of guaranteed portion of the Guaranteed Obligation. Payable as follows: 20% upon signing of the term sheet; 80% at closing.
3. Maintenance fee – paid by the Borrower (project developer). Expected to be in the range of \$10,000-\$25,000 per year.

Other

NEPA

If an environmental assessment or environmental impact statement is not otherwise available from a federal agency, DOE will evaluate each project to determine appropriate level of environmental review.

Lender-Applicants or proposed Borrowers “should be advised that projects requiring an EIS (potential 18-24 month processing time) will be unlikely to complete the NEPA review process before the deadline for commencing project construction (September 30, 2011). Projects requiring an EIS are those expected to ‘significantly’ impact the environment.”

Details several items and sub-items to be included in the application to DOE to determine the level of NEPA review including a description of facilities, project location, proposed construction and operation, project progression, status of other environmental reviews, alternative sites or operating parameters, post-operational requirements, and other actions in the project area.

Full details can be found in Attachment B beginning on page 60 of the solicitation.

Davis-Bacon

The economic recovery bill requires that projects receiving a loan guarantee pay prevailing wages. Full details can be found in Appendix H of the full solicitation. (Page 111)

Buy American

Buy American is not expected to apply to wind energy projects under 1705 (because they would not be considered “public works”). But, DOE urges

applicants to review OMB's guidance on Buy American provisions in ARRA. Additional information can be found in an OMB memo here:
http://www.whitehouse.gov/omb/assets/memoranda_fy2009/m09-15.pdf

Reporting Requirements

As with all recovery act programs, loan guarantee recipients are subject to extensive quarterly reporting requirements. Lead lenders and borrowers will be subject to reporting. (Page 11). The final guidelines on reporting are not yet available. DOE advises applicants and borrowers to monitor the following website to stay abreast of reporting requirements: www.energy.gov, www.lgprogram.energy.gov, www.whitehouse.gov/omb/memoranda_default/, and www.recovery.gov

Notice: This summary document does not constitute legal or investment advice and should not be used as such. AWEA is not responsible for the accuracy, completeness or content of an application. All applicants should review all government documents individually and consult their own legal and other counsel.