



U.S. Department of Energy Loan Guarantee Program: Innovative Technology Solicitation

On July 29, 2009, the U.S. Department of Energy (DOE) released a solicitation (Reference Number: DE-FOA-0000140) under the Title XVII loan guarantee programs “for projects that employ innovative energy efficiency, renewable energy, and advanced transmission and distribution technologies.” Guarantees under this solicitation are limited to commercialization of such technologies, not for demonstration or pilot projects.

The solicitation includes funding for both Section 1703 innovative programs and Section 1705 innovative programs. The difference being that projects funded under Section 1705 can have the credit subsidy cost paid by DOE per a provision in the American Recovery and Reinvestment Act (ARRA, a.k.a. the economic stimulus bill).

The solicitation does **not** cover commercial renewable technologies. However, it is worth reading the solicitation to understand that process and see what type of information DOE is requiring since the eventual solicitation for commercial technologies will likely have many similar features. Commercial is defined as being deployed in three or more projects in the United States for five or more years. Everything else may be considered innovative.

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

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Table of Contents

[Summary](#)

[Eligibility](#)

[Application Process](#)

[Review Process and Criteria](#)

[Post-Selection: Project Due Diligence, Underwriting and Negotiations](#)

[Closing](#)
[Fees](#)
[Application Submission Requirements](#)

Summary

DOE will make \$8.5 billion available under this solicitation for innovative technologies under Section 1703. This funding was provided in the FY09 Omnibus Appropriations Act.

In addition, the solicitation makes available \$2.5 billion to pay the credit subsidy costs for awards for innovative technologies under Section 1705. Of this, up to \$500 million is reserved for leading edge biofuels projects. This funding was provided in ARRA. According to ARRA, Section 1705 projects must commence construction by September 30, 2011.

Guarantee limited to 80% of total project cost.

Borrower and other principles involved must have made or will make a significant equity contribution (defined as cash) in the project.

Information requested and documentation produced “will conform substantially in scope, quality and detail with the information typically produced during the course of an arm’s length commercially negotiated project or commercial financing of this scale.”

“DOE expects to analyze projects primarily on a limited recourse project financing basis.” DOE will not assume any pre-construction risk.

“DOE is prepared to consider a variety of financing structures as presented by applicants as long as the proposed structure provides DOE with a reasonable prospect of repayment by the borrower of the principal and interest on the Guaranteed Obligations and other project debt...Loan guarantee structures that fall outside the classic limited recourse project finance approach, such as corporate financings, but that meet the above criteria...are encouraged.”

Eligibility

Applicants are strongly encouraged to verify their proposed projects are not eliminated by any of the threshold determinations set forth in Section 609.7(a) of the Final Regulations (available online here: <http://www.lgprogram.energy.gov/lgfinalrule.pdf>)

Section 609.7(a) says, Applications will be denied if:

(1) The project will be built or operated outside the United States;

- (2) The project is not ready to be employed commercially in the United States, cannot yield a commercially viable product or service in the use proposed in the project, does not have the potential to be employed in other commercial projects in the United States, and is not or will not be available for further commercial use in the United States;
- (3) The entity or person issuing the loan or other debt obligations subject to the loan guarantee is not an Eligible Lender or other Holder, as defined in § 609.11 of this part;
- (4) The project is for demonstration, research, or development.
- (5) The project does not avoid, reduce or sequester air pollutants or anthropogenic emissions of greenhouse gases; or
- (6) The Applicant will not provide an equity contribution.

Applications under 1705 will be denied if project cannot begin construction by September 30, 2011 or if it will not create or retain jobs in the U.S. The term commencing construction means “the borrower of such a project has received all necessary licenses, permits and local and national environmental clearances necessary to proceed, has completed all pre-construction design and prototype testing; has engaged all required contractors and ordered all necessary essential equipment and supplies so that physical construction of such project has commenced or may commence on or before September 30, 2011.” DOE will require construction to commence within 30 days of initial disbursement under a loan guarantee agreement.

Foreign ownership or sponsorship of a project is permissible so long as the project is located in one of the 50 states, D.C. or U.S. territory.

Solicitation is for “projects ready for commercial deployment in the proximate future” that (1) avoid, reduce or sequester greenhouse gases (2) represent new or significantly improve technologies and (3) provide a reasonable prospect of repayment.

NEPA applies.

Davis-Bacon applies to Section 1705 awards.

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

“Projects that are currently at the pilot stage or which have not completed a full-scale demonstration project, including capture of appropriate data as to output, processes and costs, should not apply for a loan guarantee under this Solicitation...applicants must have minimum of 6 months of operating and

performance data, including 1,000 to 2,000 hours of operation data, obtained from their demonstration project.”

Applicants must show in their applications that a site has been selected for the named project and that the applicant possesses control of the site, for example through current ownership, through an option to purchase the land or through a lease agreement.

Primary goals of awards (in no particular order):

- a) the greatest impact in avoiding, reducing or sequestering air pollutants or anthropogenic emissions of greenhouse gases
- b) the lowest cost of delivered energy based on the costs of the full supply chain (basic elements of production to final consumption), including minimizing needs for new infrastructure
- c) the greatest impact on reducing reliance on insecure sources of energy
- d) the greatest impact on reducing infrastructure vulnerabilities
- e) the fastest time to project completion
- f) the extent to which the proposed technology employed constitutes a New or Significantly Improved Technology
- g) the most competitive or efficient use of the loan guarantee issued under Title XVII
- h) the readiness of the New or Significantly Improved Technology to be employed commercially, replicated and available for further commercial use in the United States
- i) the greatest use of a New or Significantly Improved Technology(ies) that constitute(s) an important improvement(s) in technology, as compared to Commercial Technologies in service in the U.S. at the time the Term Sheet is issued and as compared to technologies proposed in other applications submitted in response to this Solicitation.
- j) the greatest extent by which the DOE loan guarantee facilitates the proceeding of the project.

Application Process

The application process consists of Part I and Part II. Part I provides DOE with a summary level description of the project, project eligibility, financing strategy and progression to date on things like licensing or regulatory or permit approvals, site preparation, long lead time procurement etc. Part II is much more detailed. DOE will assess Part I, which will assist applicants in deciding whether to proceed with the cost and effort of Part II. The decision is up to the applicant. Additional details on what should be included in the Part I and Part II applications can be found in Attachment A1 and A2 of the solicitation beginning on page 29.

One quarter of the application fee must be paid upon filing Part I with the remaining 75% due upon filing Part II. None of the application fee is refundable.

There will be seven rounds of reviews. All Part I and Part II submissions will be reviewed on a continuous basis as they are received. Applicants applying in earlier rounds will enjoy a “first mover’s” advantage in terms of order of priority of review. Also, all Part II submissions during any round will be competitively evaluated against other such filings. Part II information may be filed at any time after DOE notifies that Part I is complete and the project qualifies as an eligible project.

Round	Part I Submission Due Date	Part II Submission Due Date
1	September 14, 2009	November 13, 2009
2	October 22, 2009	January 15, 2010
3	December 23, 2009	March 12, 2010
4	February 18, 2010	May 14, 2010
5	April 22, 2010	July 19, 2010
6	June 24, 2010	September 17, 2010
7	August 24, 2010	December 31, 2010

A project sponsor may only submit one application for one project employing a particular technology.

Any time following the due date for a particular round of Part II submissions, DOE may approve applications for the purpose of proceeding to due diligence, underwriting, and negotiation.

If DOE decides not to pursue a project further, the applicant will be notified in writing of the reason for DOE’s decision. DOE’s decision is final and is not appealable, but it will not prejudice the applicant from applying under a future round.

Review Process and Criteria

During the review period, communications from the applicant to DOE are generally not permitted unless responding to a DOE request.

Review Criteria Weighting is as follows:

Technical

Technical Relevance and Merit	15.0%
Applicant Capabilities, Technical Approach and Work Plan	20.0%
Environmental Benefits	15.0%

Financial

Creditworthiness	30.0%
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Construction Factors	10.0%
Legal and Regulatory Factors	10.0%
Total	100.0%

Further information on technical review: “DOE will evaluate the clarity and technical strength of the approach to achieve the project’s objectives, including, but not limited to, (1) the potential for replicability of commercial use of the technology in the United States, (2) the potential for future long-lasting commercial success of the project and the technology, (3) technical readiness for near-term commercial application, (4) risk and mitigation plan(s) associated with bringing the technology to fruition, (5) timeframe required to achieve results contemplated in the application, and (6) solely with respect to projects proposed as 1705 Eligible Projects, the project’s ability to commence construction on or before September 30, 2011 based on factors, including (i) the extent to which all required contractors have been engaged, (ii) the readiness for delivery of major components and equipment, (iii) the extent to which all pre-construction design and prototype testing has been completed, (iv) the extent to which definitive interconnection agreements (if applicable) have been finalized and executed, (v) the creditworthiness of the buyer under any transmission service agreement, if applicable, or other offtake agreement, (vi) the likelihood and nature of rate base treatment, if applicable, and (vii) the extent to which all necessary land rights and state and local permits, as well as the environmental clearances necessary to proceed, have been obtained or approved.”

This review will also evaluate the project’s construction plan, overall construction risk associated with the contingencies for equipment supply, selected prime mover equipment, order of operations, mobilization schedules, delivery timelines, performance milestones, equipment integration scale-up challenges, acceptance/commissioning factors and other relevant considerations.

Further information on the financial review: DOE will review project sponsors experience and financial capability, the scope and timing of equity commitments, the ability to pay in full the transaction costs (fees and expenses charged by DOE), credibility of business and financial plans, overriding market factors. Demonstration of long-term supply feedstock and production off-take arrangements, including power purchase agreements where available and appropriate, will be “significantly weighted.”

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

DOE will evaluate the construction costs, financial integrity of the general contractor, as well as any cost overrun reserve.

In addition, consistent with the ARRA, for transmission projects only, DOE will evaluate (1) the viability of the project without guarantees (2) the availability of

other Federal and State incentives (3) the importance of the project in meeting reliability needs (4) the effect of the project in meeting the environment and energy goals of the nation, a state or region of the U.S.

DOE may hire outside consultants and legal counsel to help review applications. The decision to do so is at the sole discretion of DOE. The applicant is required to fund the entire cost.

Post-Selection: Project Due Diligence, Underwriting and Negotiations

During this process, DOE may utilize the services of independent engineering, technical, financial and marketing consultants and outside legal counsel. The applicant is responsible for paying all associated fees.

In terms of the financial evaluation, DOE will review the adequacy, leverage and timing of the proposed sources of funding; the terms and rights of the various funding sources and degree of commitment; the assumptions underlying projected revenues and expenses and the likelihood that assumed technical performance will be achieved.

Where the estimated total Project Costs exceeds \$25 million, the applicant must provide a preliminary credit assessment for the project, if the project is proposed as a project finance structure, or the borrower's most recent corporate credit rating if the project is proposed as a corporate finance structure, in each case, without giving effect to the DOE loan guarantee, and from a nationally recognized rating agency. The preliminary assessment shall examine the project in the absence of a loan guarantee from DOE, and shall identify any material assumptions utilized by the rating agency in its analysis. For projects where the estimated total Project Costs is \$25 million or less, in the sole discretion of the Department, DOE may require such an assessment or corporate credit rating as well.

Determination of the technical merit of the project will be influenced by the quality of the applicant's engineering report, including the professional credentials of the consultant, scope of the undertaking, and strength of the opinions provided.

DOE will also review the legal structure of the project. This will involve analysis of draft and final legal agreements among project participants, including equity owners, financing sources, engineering and construction contractors, operation and maintenance contractors, equipment suppliers, host communities, and any other counter-parties of interest. Additionally, a legal review will include an analysis of the intellectual property rights of participants in the project to ensure that the project can use all of the proposed technology to be employed in the project.

Financial models run by sponsors should assume, on the one hand, that the credit subsidy cost is paid by the applicant, and a subsequent run that assumes the credit subsidy cost is paid by DOE.

DOE will also assess the sponsors' track record in project development; the sponsors' financial strength and resources; the strategic value of the project to sponsors; and the experience and experience of the management team.

The rights of DOE shall be superior to the rights of any other person with respect to the property in the event of default.

Applicants must provide enough information for DOE to determine the appropriate level of NEPA review. DOE will prepare an EIS or, as appropriate, adopt an EIS prepared by another federal agency. The applicant is required to pay the cost of the EIS.

DOE may decide to issue a term sheet. Upon execution, the applicant must pay 20% of the non-refundable "facility fee". The remaining 80% is due at closing of a loan guarantee agreement.

If DOE decides not to issue a term sheet, the applicant will be notified in writing of the reasons for the decision. The decision is final and is not appealable.

DOE may enter into a conditional commitment, which will be conditionally binding and include the following terms, among others: material change qualifiers; a series of conditions precedent to the closing of the transaction; expiration dates; and termination provisions for failing to pay fees according to DOE's schedule.

The Secretary of DOE may terminate a conditional commitment for any reason at any time prior to the closing of a loan guarantee agreement.

Closing

The closing process and requirements are described in Section 609.9 of the final Title XVII regulations here: <http://www.lgprogram.energy.gov/lgfinalrule.pdf>

Fees

There are three primary fees:

(1) Application fee – covers costs associated with pre-selection evaluation of an application. A portion (25%) must be paid along with Part I filing, the balance is due upon filing Part II. The application fee is as follows:

Loan guarantee amount	Total application fee	25%	75%
0-\$150 million	\$75,000	\$18,750	\$56,250
\$150M-\$500 million	\$100,000	\$25,000	\$75,000
Above \$500 million	\$125,000	\$31,250	\$93,750

(2) Facility fee – 20% is due upon execution of the term sheet, 80% is due on the closing date of a loan guarantee agreement.

Loan guarantee amount	Total facility fee amount
0-\$150 million	1% of the guaranteed amount
\$150M-\$500 million	\$375,000 + 0.75% of the guaranteed amount
Above \$500 million	\$1,625,000 + 0.50% of the guaranteed amount

(3) Maintenance fee – to cover DOE’s expenses in serving and monitoring the loan guarantee during construction, startup, commissioning and operational phases of the project. The amount is expected to be between \$50,000 - \$100,000 per year.

Credit Subsidy Cost (for 1703 projects only)

For 1703 projects, the sponsor must pay the credit subsidy cost. For 1705 projects, DOE will pay. In cases where the applicant will be required to pay the Credit Subsidy Cost, DOE is committed to making every effort to provide a preliminary estimate of the Credit Subsidy Cost for the desired loan guarantee no later than at the issuance of a Term Sheet to the Project Sponsor or applicant. The final Credit Subsidy Cost determination can only be made at the time of the Loan Guarantee Agreement and may differ from the preliminary estimate of the Credit Subsidy Cost, depending on project-specific and other relevant factors including final structure, the terms and conditions of the debt supported by the Title XVII guarantee and risk characteristics of the project. The applicant may not finance this payment of the Credit Subsidy Cost through funds obtained from the federal government or through a loan made or guaranteed by the federal government, unless otherwise explicitly authorized by an act of Congress. Similarly, the FY 2009 Appropriations Act also provides that proceeds from loan or other debt obligations that are guaranteed by the Federal Government may not be used to pay the Credit Subsidy Cost.

Application Submission Requirements

Applicants must submit their applications online via FedConnect. Instructions on how to register and submit can be found at www.fedconnect.net

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.

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.