



U.S. Department of Energy Loan Guarantee Program: Transmission Infrastructure Solicitation

On July 29, 2009, the U.S. Department of Energy (DOE) released a solicitation (Solicitation Number: DE-FOA-0000132) under Section 1705 of the Title XVII loan guarantee programs for “Electric Power Transmission Infrastructure Investment 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 full solicitation is available online [here](#).

Additional questions can be directed to:

Email: lgprogram@hq.doe.gov (subject line must include “RECMPLX TRANS Solicitation Question”)

Phone: 202-586-8336

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Summary

Section 1705 of Title XVII allows DOE to support debt financing for transmission infrastructure investment projects. This DOE solicitation provides up to \$750 million to pay the credit subsidy costs of loan guarantees made for transmission.

Projects receiving a loan guarantee under this solicitation must have commenced construction no later than September 30, 2011.

Sponsors selected for an award must have a “reasonable prospect of repayment” and awards may not be made under Section 1705 for research, development or demonstration projects.

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 on a corporate financing basis (i.e. with full recourse to the applicant/project sponsor’s balance sheet) as well as on a limited recourse project financing basis. DOE will not assume pre-construction risk.

Eligibility

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.

An eligible project under this Solicitation shall consist of a complex electric transmission systems project located in the United States that

- (i) utilizes a Commercial Technology,
- (ii) is reasonably likely, at the time of the submission of the Part I application, to commence construction on or before September 30, 2011,
- (iii) meets all applicable requirements of Title XVII, including Section 1705, and of the Recovery Act, this Solicitation and Attachment G,
- (iv) cannot be financed from private sources on standard commercial terms, and
- (v) meets at least one of the following criteria set forth below (an “Eligible Project”):

1. The project involves new or upgraded lines of at least 100 miles of 500 kilovolts (kV) or higher or 150 miles of 345 kV.
2. The project has at least 30 miles of transmission cable under water.
3. The project has a high voltage direct current (DC) component.
4. The project is a major interregional connector.
5. The project is designated as a National Interest Electric Transmission Corridor by DOE under the Energy Policy Act of 2005

6. The project is associated with offshore generation, such as open ocean wave energy, ocean thermal, or offshore wind.
7. The project mitigates a substantial reliability risk for a major population center.
8. A set of improvements to an integrated system within a State or region that together aggregate to meet the criteria in Section II.A.1 above.

Projects that support the generation of power from renewable energy sources will receive special consideration.

The term “commence construction” means that the Borrower 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.

Davis-Bacon prevailing wage standards apply.

Buy American may apply if the project is considered “public works”. 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

ARRA requires reporting on the number of jobs created and retained by the project ten days after the end of each calendar quarter.

Overview of Process

The solicitation provides for a four stage process:

(1) Application

(2) Project evaluation by DOE

DOE will undertake due diligence and underwriting with the assistance of outside consultants and counsel. Extensive dialogue is expected between DOE and applicant during this time.

(3) Term sheet/conditional commitment

The issuance or negotiation of a term sheet does not constitute a commitment by DOE to issue a loan guarantee. The Secretary of DOE may terminate a conditional commitment for any reason at any time prior to execution of the loan guarantee agreement.

(4) Final approval

Application Phase

The process is divided into 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 24.

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 three rounds of review with different deadlines. 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.

Summary of application schedule:

| | |
|--------------------------------------------|--------------------|
| Solicitation Issue Date | July 29, 2009 |
| Part I Submissions Due | September 14, 2009 |
| First Round Part II Submission Due | October 26, 2009 |
| Second Round Part II Submission Due | December 10, 2009 |
| Third & Final Round Part II Submission Due | January 25, 2010 |

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

DOE shall endeavor to review the Part II submissions filed during a given round and make a recommendation for or against selection for due diligence review within two months from the closing date of such round of review.

ARRA requires that DOE consider the follow factors during its evaluation:

- (1) The viability of the project without guarantees (from DOE or otherwise)
- (2) The availability of other Federal and State incentives
- (3) The importance of the project in meeting grid 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.

To follow is the weighting of criteria that will be used:

Technical Review

| | |
|-------------------------------|-------|
| Technical Relevance and Merit | 10.0% |
| Technical Approach/Work Plan | 10.0% |
| Environmental Benefits | 10.0% |

Programmatic Review

| | |
|------------------------------|-------|
| Construction Factors | 10.0% |
| Legal and Regulatory Factors | 10.0% |

Creditworthiness of the Project 50%

Total 100%

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.

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.

More than one application may be submitted by an applicant.

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.

Post-Selection: Due Diligence, Underwriting, Negotiation

Aspects of the financial review by DOE will include: analysis of the adequacy, leverage and timing of the proposed sources of funding; review of the terms and rights of the various funding sources and degree of commitment; assessment of the adequacy of proposed contingency and reserve funding; review of the assumptions underlying projected revenues and expenses and the likelihood that assumed technical performance will be achieved.

The technical review will involve a thorough review of the applicant's engineering report. 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. In addition to the technical merits in terms of the engineering and construction plan, there will be an assessment of the ability of the project to enhance regional reliability goals, as well as to facilitate the meeting of environmental (including climate change) and energy goals of the nation or affected State or region.

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.

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 expertise 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.

NEPA will apply. DOE anticipates most of the transmission awards will require the preparation of an environmental impact statement (EIS). DOE will prepare an EIS or, as appropriate, adopt an EIS prepared by other federal agencies. The applicant will be responsible for third party contractor costs associated with preparing the EIS.

DOE may decide to issue a term sheet. Upon execution, the applicant must pay the non-refundable "facility fee".

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. The fee is \$800,000; \$200,000 of which is due with Part I filing and the balance of which is due with Part II filing.

(2) Facility fee – ½ of 1.0% of guaranteed portion of Guaranteed Obligation.

(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 \$200,000 - \$400,000 per year.

DOE anticipates it will pay the credit subsidy cost, subject to the availability of funds.

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.