

WSGR ALERT

AUGUST 2011

DEPARTMENT OF DEFENSE ANNOUNCES BILLIONS OF DOLLARS IN OPPORTUNITIES FOR RENEWABLE ENERGY AND ENERGY EFFICIENCY COMPANIES

Navy Declares Domestic Biofuel Production Critical For National Energy Security & “Net Zero” Army Bases Signify A Wealth Of Opportunities

In recent weeks, the Army and Navy have solidified and ramped up their commitment to energy innovation and technology. Going forward, the services are likely to be the leading public-sector partners for funding, demonstrating, and commercializing innovative energy technology. The leadership role of the Department of Defense (DOD) is driven in part by policy directives, but at a more fundamental level, its commitment is driven by economic and national security objectives—a balance that necessitates the development of new public-private partnerships and more sustainable ongoing investment for the clean technology sector.

Wilson Sonsini Goodrich & Rosati (WSGR) has been at the forefront of DOD opportunities, and the below alert summarizes two significant developments for the clean technology industry. First, the U.S. Navy (as part of an inter-agency effort) formally announced its intent to invest in drop-in biofuels utilizing the Defense Production Act (DPA). Second, the U.S. Army announced the creation of a new energy office to oversee investments in renewable energy and energy efficiency. Most notably for industry, the Army is now seeking private-sector feedback (and, eventually,

participation) to shape the \$7.1 billion rollout for Net Zero military-base installations.

Policy Drivers

Federal agencies, including DOD, are held to several energy-related policy drivers. The Energy Policy Act of 2005 (EPA) requires federal agencies to purchase 7.5 percent of their energy from renewable sources by 2013. Presidential Executive Order 13423 requires that half of this renewable energy comes from new sources, and the National Defense Authorization Act of 2007 (NDAA) requires that 25 percent of DOD’s total electricity comes from renewable sources by 2025.

The Navy expanded these objectives to include consuming 50 percent of its energy from renewable energy sources by 2020, producing 50 percent of its shore-based energy from alternative sources by 2020, reducing petroleum use by 50 percent in commercial fleets by 2015, and sailing the “Great Green Fleet” by 2016. The Army, in contrast, has begun focusing on sector-specific initiatives such as the acquisition of electric and hybrid vehicles and the development of renewable energy projects at key army installations. With the Army’s

recent announcement of an Energy Initiatives Office, we expect the Army to build momentum and visibility similar to the Navy in communicating programmatic goals and energy-related project opportunities.

Building a Domestic Base for the Production of Drop-In Biofuels

The Navy’s fleet-specific goals positioned it to be at the forefront of advanced biofuels procurement, though it was not previously authorized to fund the development of biofuels. On August 16, 2011, President Obama announced that the Navy, Department of Agriculture (USDA), and the Department of Energy (DOE) will invest up to \$510 million during the next three years in partnership with the private sector to produce advanced drop-in biofuels, utilizing the DPA.¹ Secretary of Agriculture Tom Vilsack, Secretary of Energy Steven Chu, and Secretary of the Navy Ray Mabus have signed a Memorandum of Understanding (MOU) to accelerate the production of bio-based jet and diesel fuel for military and commercial purposes.² The joint plan calls for the investment of the three departments to be used for the construction or retrofitting of several drop-in biofuel plants and refineries.

¹ To learn more about the President’s announcement, visit <http://www.whitehouse.gov/the-press-office/2011/08/16/president-obama-announces-major-initiative-spur-biofuels-industry-and-en>.

² See the full MOU at <http://www.rurdev.usda.gov/SupportDocuments/DPASignedMOUEnergyNavyUSDA.pdf>.

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The funds will be competitively allocated using the authority of the DPA, a broad and potentially powerful legislative vehicle, which WSGR covered in a June 2011 webinar related to alternative government financing opportunities.³ The government's investment is expected to be leveraged with a one-to-one match from the private sector, but the form of the opportunity has yet to be determined. Accordingly, DOD is seeking input from industry to define and shape its investment and project criteria. A request for information (RFI) is expected to be issued in the near term, and it is imperative that companies interested in pursuing this opportunity respond to the RFI. The agencies will develop a request for proposal (RFP) based largely on industry feedback obtained during the RFI process.

The RFI process is common to many federal agencies in shaping programs and opportunities, but its use can come into play at various points during a program's formation. For example, DOE and USDA have utilized industry feedback to validate objectives for an already defined program, and to refine regulations for programs created through legislation. In comparison, DOD will often utilize the RFI process very early on to target new areas of focus, identify capability gaps, and ultimately shape the opportunity. WSGR expects the forthcoming RFI to play a significant role in shaping and influencing the RFP. As such, participating in the RFI process and communicating and interacting with government officials will be essential for companies interested in pursuing this opportunity.

Nine Additional RFIs Critical to the Clean Technology Industry

Currently, the Army gets approximately 2.1 percent of its energy from renewable energy sources, a number that must increase dramatically to achieve the 25 percent

directive by 2025, which represents an estimated \$7.1 billion of new investment. On August 8, 2011, the Army announced a series of RFIs for Fort Bliss in El Paso, Texas, which has been designated as a Pilot Integrated Net Zero Installation to achieve Net Zero status in Energy, Water, and Waste by 2020.

The Army has always been a first adopter, and is actively seeking information on renewable and sustainable technologies, processes, approaches, and solutions to support this pilot project at Fort Bliss. Nine individual RFIs⁴ have been issued to support the Army's objectives in waste-to-energy, wastewater reclamation and reuse, large-scale energy storage, large-scale wind energy, small-scale wind energy, geothermal energy, microgrids, solar energy, and Net Zero homes and neighborhoods.⁵

Similar to the biorefinery opportunity above, each of these RFIs will be utilized to help the Army understand the technologies and costs associated with achieving mission objectives, design a feasible set of RFPs for industry, and achieve a Net Zero Installation status. Essentially, information gathered from the RFI process will determine the acquisition and implementation strategy for Fort Bliss to achieve the Army's Net Zero goals. Comments from the RFIs are due on October 7, 2011.

Military construction funding will be leveraged, but the Army is interested in public-private partnerships to leverage private capital for project development on Army land, with long-term payback through commodity savings or direct purchases of the commodity from the private developers. The types of contractual tools available, including Extended Use Leases (EULs), Power Purchase Agreements (PPAs), Energy Savings Performance Contracts (ESPCs), and Utility Energy Savings Contracts (UESCs), among others, may achieve the objective of private

capital investment with long-term pay off, but the military has little experience in executing these arrangements. The Army and DOD will be equally as interested in innovative structuring and financing methods as they are in innovative technology approaches for saving or generating energy. In total, the Army will pilot five installations as Net Zero Energy, five installations as Net Zero Waste, five installations as Net Zero Water, and one (Fort Bliss) representing all three categories by 2020. By 2030, the Army intends to roll out its Net Zero Installation strategy to 30 of its bases.

Summary

These two recent developments present significant opportunities for industry to play an influential role in shaping DOD programs and projects that will be implemented over the next three to ten years. WSGR strongly encourages companies with applicable technologies and project development experience to submit comments to these RFIs, and, as appropriate, to actively engage with Army and Navy officials as well as DOE and USDA officials to position their companies for direct opportunities and new strategic partnerships.

In order to provide additional insight on these programs and opportunities, WSGR will be hosting a webinar to discuss the forthcoming biorefinery RFI and funding through the DPA, as well as the Army RFI process.

Wilson Sonsini Goodrich & Rosati's Government Initiatives team members are also available to answer any questions you may have. For general information, please contact Chris Groobey (cgroobey@wsgr.com). For information on biorefinery opportunities and the DPA, please contact Taite McDonald (tmcdonald@wsgr.com). For Army RFI information, please contact Sara Hochman (shochman@wsgr.com).

³ For more information, see WSGR's primer, *Alternative Government Financing for Energy Technologies and Projects – Defense Production Act Title III*, at <http://www.wsgr.com/PDFSearch/defense-production-act-title-iii.pdf>.

⁴ The nine RFIs are available at <https://www.fbo.gov/index?s=opportunity&mode=form&tab=core&id=a82343249f29df930788d7bdb6d76e4b>.

⁵ For more information on the RFIs, please visit the WSGR Clean Tech Resource Center at <http://www.wsgr.com/cleantech/WSGR/Index.aspx>.

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