Department of Energy
Renewable Energy and Efficient Energy Projects Loan Guarantee Solicitation Alert

July 10, 2014

DOE Renewable Energy and Efficient Energy Projects Loan Guarantee Solicitation

Solicitation Dates:
- Issued July 3, 2014
- Part I due by October 1, 2014 (and rolling until December 2, 2015)
- Part II due by January 14, 2015 (and rolling until March 2, 2016)

Financial Criteria:
- Up to $4 billion in loan guarantee authority
- Applicants will pay first 7 percent of credit subsidy costs
- LPO will pay remaining credit subsidy costs (up to a maximum of $17 million per project)
- LPO has $170 million to draw upon for credit subsidy payments on a first-come, first-served basis as projects are approved

Technology Areas of Interest:
- Five primary technology areas of interest remain (1) advanced grid integration and storage, (2) drop-in biofuels, (3) waste-to-energy, (4) enhancement of existing facilities, and (5) efficiency improvements
- Applicants in other energy and energy-related technologies are eligible to apply but will need to demonstrate the technical and financial strength of the project

WSGR Insights & Recommendations:
- Credit subsidy fee structure encourages larger loans and potentially riskier projects
- Given limited availability of credit subsidy funds and the DOE's ability in moving well-developed projects through quickly, applicants should evaluate potential project details, internal resources, and project partners as soon as possible
- Be prepared to submit detailed "cradle-to-grave" life-cycle assessments for projects

On July 3, 2014, the U.S. Department of Energy (DOE) Loan Programs Office (LPO) issued the final version of its Renewable Energy and Efficient Energy Projects Solicitation.[1] As discussed in our previous WSGR Alert[2] regarding the draft version of this solicitation, guaranteed loans made available pursuant to this solicitation will support energy and energy-related projects that reduce greenhouse gas emissions and support the commercialization of innovative new technologies that are replicable in their respective markets.

The final solicitation and accompanying guidance from the LPO follows a public comment period held since the draft solicitation was published on April 16, 2014. The following is a summary of important changes and updates since the draft solicitation was issued and should be read in conjunction with the previous WSGR alert referenced above.

Rolling Application Deadlines. The LPO will accept initial applications under this solicitation on a rolling basis through 2015. The first deadline for Part I submissions is October 1, 2014—applicants that qualify as eligible and have projects deemed ready to proceed will then submit their Part II submissions by January 14, 2015. Thereafter, there are four additional application submission cycles. The submission due dates are as follows:

Part I	**Part II**
October 1, 2014	January 14, 2015
December 3, 2014	March 11, 2015
April 1, 2015	July 1, 2015
August 5, 2015	November 4, 2015
December 2, 2015	March 2, 2016

[1] *See* http://energy.gov/lpo/services/solicitations/renewable-energy-efficient-energy-projects-solicitation.

[2] *See* http://www.wsgr.com/publications/PDFSearch/FOA-042114.pdf.

Credit Subsidy Cost. The DOE has $169,660,000 available to pay a portion of an applicant's credit subsidy cost (CSC). These funds will be available to pay CSC above 7 percent of the guaranteed loan amount, up to a maximum of $17 million per project. For example, a project with a $250 million guaranteed loan and a 12 percent CSC would see the applicant paying the first 7 percent, or $17.5 million, from equity funds, and the DOE paying the additional 5 percent, or $12.5 million, from appropriated funds. Applicants will receive a range of the project's expected CSC during the due diligence phase and a final CSC calculation upon execution of the loan guarantee, at which time the CSC payment is due. While the DOE and the Office of Management and Budget's CSC calculation methodology is not publicly available, applicants should be aware that a project's CSC is primarily calculated based on (1) a project's probability of default and (2) the government's expected recovery after default. The funds available to pay for an applicant's CSC will be allocated on a first-come, first-served basis. Accordingly, well-developed projects submitted in early application rounds stand to receive the greatest benefit from these funds before the allocations are expended.

Interpreting Technology Areas of Interest and Eligibility. LPO has maintained its five technology areas of interest as outlined in the draft solicitation, with a minor change such that "waste-to-energy" projects now also include waste-to-fuel applications. The LPO also has clarified how projects utilizing other technologies may pursue a loan guarantee. The prioritized technology areas of interest have already satisfied the "burden of proof" that projects using such technologies are eligible for the program, are innovative, and will have a replicable impact in their respective marketplaces. For other energy and energy-related technologies, the "burden of proof" is on the applicant to convince the LPO that the project will meet the same technical and financial eligibility requirements and drive their market forward in the same manner as the prioritized areas of interest. As long as an applicant can demonstrate that their technology is innovative, the project is located in the U.S., the project has a reasonable prospect of repayment, and there are demonstrated greenhouse gas benefits, projects outside of the five areas of interest can be strong candidates for the program.

Determining Greenhouse Gas Impact Through Life Cycle Assessment. Given the wide range of renewable energy and energy efficiency projects the LPO expects to evaluate and the various ways by which projects can avoid, reduce, or sequester greenhouse gas emissions, the LPO will use a "cradle-to-grave" life-cycle assessment (LCA) to evaluate the environmental impact of each project. The LPO expects to issue a guidance document on its expected methodologies, data requirements, and major assumptions in the near term, but in the interim, it directs applicants to consider ISO 14040 and ISO 14044 standards in determining whether a project reduces greenhouse gas emissions as required by the 1703 program regulations.[3]

Additional Flexibility on Project Evaluation. The LPO provided additional formal and informal guidance in several other key areas that applicants should consider at this stage, including the below.

- Application Completeness: Applicants will need to have a well-established project, both technically and financially, to submit a Part I application. However, the LPO has indicated an understanding of the lengthy process required to finalize equity investments, project partner relationships, and contracts for offtake, feedstock, or EPC, and has structured the application requirements for Part I, Part II, and due diligence accordingly. While this lowers the burden for a Part I submission and should be encouraging to applicants, potential applicants should still keep in mind that more advanced projects will proceed faster through each review phase.

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[3] *See* http://energy.gov/lpo/services/section-1703-loan-program/title-xvii.

- Offtake: Although projects are not required to have long-term, fixed-price, take-or-pay contracts, applicants must still propose a financing structure that enables the LPO to determine that there is a reasonable prospect of repayment of the guaranteed loan.

- Multiple Locations: For distributed-energy projects that have activities in two or more locations, applicants will need to justify to the LPO that each facility is an integral component of an integrated plan and contributes to the overall financial viability and catalytic effect of the combined project.

WSGR Insights and Recommendations.
Since the release of the draft solicitation in April, the DOE LPO has received significant feedback from project developers as potential applicants, financial institutions as potential co-lenders, and a range of other stakeholders. The resulting final solicitation evidences a well-structured and timeline-driven program with the resources to move strong projects through the loan guarantee process efficiently, while discouraging ineligible applicants in a transparent manner.

The availability of funds to pay applicants' CSC over 7 percent and up to $17 million incentivizes potentially riskier projects (which by definition will have a higher CSC than less-risky projects). Projects will still need to be strong enough to successfully pass DOE's rigorous review process, but projects that receive a relatively high CSC of 12 percent to 15 percent for a $200 million to $300 million loan would receive the most benefit from the LPO's payment of CSC above 7 percent (capped at $17 million per project). This may include projects with more technology risk, projects with offtake agreements with shorter tenors than typical 20–30 year power purchase agreements (PPAs), or projects that receive other forms of federal support, all of which can be expected to receive a higher CSC calculation from the LPO and the Office of Management and Budget.

As a result of the LPO's formal guidance and our work with the program to date, WSGR believes that this loan guarantee opportunity is more attractive for innovative energy and clean technology companies than prior solicitations. Before applying to the program, potential applicants should be comfortable with their project's chance of success at proceeding through each round. Given the likely 12-month timeframe from Part I submission to conditional commitment, interested companies should be certain to thoroughly evaluate internal resources and capabilities; identify external resources such as independent engineers and environmental and LCA consultants; and consult with program experts to ensure an application will be as thorough as possible at each stage of review in order to expedite the loan guarantee process.

As the program proceeds and WSGR gains further insight into these areas, we will continue to update our clients and other interested parties on the program. WSGR has assisted numerous clients with successful DOE loan guarantee transactions and has been very active in interacting with the DOE LPO during the finalization of this solicitation, including being the only law firm referenced in the DOE's responses to public comments.[4] For more information or assistance with submitting an application before the October 1, 2014, initial deadline, please contact one of the following WSGR personnel or your primary contact at our firm.

[4] *See* http://energy.gov/sites/prod/files/2014/07/f17/Comment%20ListingResponse_REEE%20Solicitation_final.pdf.

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