

FOA Alert

Department of Energy Advanced Fossil Energy Loan Guarantee Program Alert

FOA Summary

FOA Dates: Released July 2, 2013.
Comments due by September 9, 2013.

Program: DOE Loan Programs Office

Advanced Technology Areas of Interest:

- Advanced Resource Development
- Carbon Capture
- Low-Carbon Power Systems
- Efficiency Improvements

Draft FOA Highlights:

- \$8 billion in total loan guarantee authority
- \$1 million application fee
- Credit subsidy cost due at execution of loan guarantee agreement

WSGR Insights and Recommendations:

- Interested industry applicants should comment on portions of solicitation of interest or problematic to encourage release of a final solicitation that is attractive to potential applicants.
- Receipt of draft language is the primary means for the DOE to garner input and provide substantive modifications to a solicitation.

On July 2, 2013, the U.S. Department of Energy (DOE) Loan Programs Office (LPO) issued a draft loan guarantee solicitation for innovative and advanced fossil energy projects and facilities. The DOE LPO draft solicitation is targeted to support projects that substantially reduce greenhouse gas and other air pollution from fossil energy facilities in the United States. The purpose of issuing this draft language is to receive comment from industry, potential applicants, and other stakeholders on the structure and intent of the first new loan guarantee solicitation of the Obama administration's second term. At this time, \$8 billion in loan guarantee authority is expected in the final solicitation.

Comments are due to the DOE by September 9, 2013, and the LPO will host public comment meetings on July 31, August 14, and August 21.

Overview and Areas of Interest. Authorized by Section 1703 of the Loan Guarantee Program through Title XVII of the Energy Policy Act of 2005 (Title XVII), the DOE LPO issued the draft language to solicit comments on all aspects of the draft solicitation.

The solicitation aims to support projects in four key advanced fossil energy technology areas:

- Advanced Resource Development
- Carbon Capture
- Low-Carbon Power Systems
- Efficiency Improvements

Projects utilizing one or more of these technologies must avoid, reduce, or sequester air pollutants or greenhouse gas emissions, as well as validate that the technology is new or significantly improved compared to commercial technology currently in service in the U.S.

Eligible Project Examples. Eligible projects that qualify under these broad technology areas and meet the stated requirements cover a wide range of potential applications. Under Advanced Resource Development, projects could include novel oil and gas drilling and coal-bed methane recovery. Carbon Capture projects seek to capture CO₂ from sources ranging from fuel reforming gas synthesis to improving effluent streams from industrial processing facilities. Low-Carbon Power Systems seeks projects utilizing oxycombustion, chemical looping, hydrogen turbines, or fuel cells, and Efficiency Improvement projects could include such technologies as combined heat and power or waste heat recovery. While the solicitation specifies projects under these

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described technology areas, the DOE LPO is open to comments that propose additional technology or topic areas that meet the solicitation requirements.

Application Procedure and Criteria. Similar to previous solicitations from the DOE LPO, Part I of the application is a summary description of the proposed project. This will enable the DOE LPO to determine the overall eligibility and satisfaction of application requirements. The DOE LPO's review of Part I will conclude with an invitation of qualified applicants to file Part II submissions, which will include more detailed information regarding the proposed project.

Following the Part II submission, the applicant will again be reviewed and evaluated to determine if the applicant will be invited into due diligence. Of particular interest in the DOE's evaluation criteria is the project's ability to be financed without requiring the loan guarantee, the preliminary site selection process, the complexity of the National Environmental Policy Act (NEPA) review required, the applicant's utilization of the loan guarantee in funding the project, and the project team's prior experience in the engineering, design, construction, financing, and operation of similar projects.

After being invited into due diligence, the applicant will have to file responses to the DOE LPO's requests. The DOE LPO will then formalize the loan guarantee process by negotiating term sheets with selected applicants, issuing conditional commitments, and negotiating the transaction documents. Once the transaction documents are negotiated, the DOE LPO can calculate a final credit subsidy cost. The parties will then execute the loan guarantee agreement to finalize the transaction. Of note is that the DOE LPO anticipates that all applicants will be required to pay the credit subsidy cost of the proposed project prior to closing.

Program Fees. Fees associated with the administrative costs of administering the technical and financial review and continuing oversight of the project are detailed in the table below:

Fee	Amount	Due Date
Application Fee Part I	\$250,000	11:59 PM Eastern on day of Part I application submission
Application Fee Part II	\$750,000	11:59 PM Eastern on day of Part II application submission
Facility Fee Part I	.125% of principal amount of guarantee	Upon issuance of conditional commitment
Facility Fee Part II	.375% of principal amount of guarantee	Upon execution of loan guarantee agreement
Annual Maintenance Fee	\$500,000/year	Upon execution of loan guarantee agreement and annually thereafter
Credit Subsidy Fee	TBD	Upon execution of loan guarantee agreement

Loan Guarantee Solicitation...
(Continued)

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WSGR Insights and Recommendations. Over the last two years, the DOE LPO has refined the application, execution, and oversight of this new solicitation based on feedback gleaned from congressional and federal government officials, as well as the various other loan guarantee programs utilized across the federal government. Despite this effort, the current draft solicitation may only be attractive to a limited universe of projects given the timeline of the application process, the substantial application and maintenance fees, and the requirement that the applicant bear, among other costs, 100 percent of the credit subsidy costs, which are not determined until final stages of the negotiation process and can be in the range of 10 percent or more of the financing provided.

Accordingly, Wilson Sonsini Goodrich & Rosati strongly recommends that companies potentially interested in pursuing this program submit comments to the DOE LPO or attend one of the three public comment meetings. WSGR will continue to keep clients and other interested parties updated on this program. For more information regarding this alert, please contact a WSGR attorney or senior advisor:

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