

## FOA Alert

# Department of Energy Draft Renewable Energy and Efficient Energy Loan Guarantee Solicitation Alert

### DOE Draft Renewable Energy and Efficient Energy Loan Guarantee Summary

#### FOA Dates:

- Released April 16, 2014
- Comments due by May 16, 2014
- Final solicitation expected June or July 2014

#### Program:

- DOE Loan Programs Office

#### Technology Areas of Interest:

- Advanced Grid Integration and Storage
- Drop-in Biofuels
- Waste-to-Energy
- Enhancement of Existing Facilities
- Efficiency Improvements

#### Key Financial Criteria:

- Up to \$4 billion in total loan guarantee authority dependent on credit subsidy rate
- Application and facility fees structured around target project loan size of \$150,000,000
- \$170,000,000 is available in appropriated funds for the DOE to pay first awarded projects' credit subsidy costs, rather than paid for by applicant

#### WSGR Insights & Recommendations:

- Reduced application fees lower barriers to entry for innovative applicants and smaller projects
- The DOE plans to invite into Phase II only those applicants with a high likelihood of success
- Applicants still need to keep in mind likely high up-front transaction costs and upcoming determination on credit subsidy fees

On April 16, 2014, the U.S. Department of Energy (DOE) Loan Programs Office (LPO) issued a draft loan guarantee solicitation for renewable energy and efficient energy projects and facilities. The draft solicitation is targeted to support projects that substantially reduce greenhouse gas emissions and support innovative new technologies that are catalytic and replicable in their respective markets. At this time, \$2.5 billion to \$4 billion in loan guarantee authority is expected to be made available via the final solicitation. Guaranteed loans would be provided by the federal government in a direct transaction with the borrower. There is no need for a lender of record or other involvement of commercial or investment banks.

Comments on the draft solicitation are due to the DOE by May 16, 2014, and the LPO will host public comment meetings April 21 in Austin, April 24 in Denver, April 28 in Arlington, and May 6 in Minneapolis. WSGR anticipates that a final solicitation will then be issued in June or July of 2014.

**Overview and Areas of Interest.** The draft solicitation aims to support projects in five key renewable energy and efficient energy technology areas:

- Advanced Grid Integration and Storage
- Drop-in Biofuels
- Waste-to-Energy
- Enhancement of Existing Facilities
- Efficiency Improvements

Projects utilizing one or more of these technologies must avoid, reduce, or sequester air pollutants or greenhouse gas emissions, and the technology itself must be 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 Grid Integration and Storage, grid-scale and distributed energy storage systems, advanced inverters and power conversion technologies, and microgrids and related technologies that incorporate grid communications and energy management systems are of interest, particularly as they enable greater adoption of distributed renewable generation. Drop-in Biofuels includes both new facilities and upgrades to existing ethanol facilities, in each case to produce drop-in intermediates (such as bio-crude) or gasoline, diesel, or jet fuel as final products. Waste-to-Energy projects include landfill gas systems, anaerobic digesters, and agricultural or forestry waste conversion platforms to power, fuels, and bioproducts. Enhancement of Existing Facilities focuses on retrofitting existing infrastructure, such as hydro facilities or wind turbines, for improved energy production. Efficiency Improvements include waste heat

recovery in industrial processes and improvements towards energy usage and energy management applications in buildings across the residential and commercial sectors.

**Application Procedure and Criteria.** Similar to the recent Advanced Fossil Energy Solicitation released in December 2013, Part I of the application is a summary description of the proposed project. This will enable the DOE LPO staff 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 applications 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 their submission will be invited into due diligence. Of particular interest in the DOE's Technical Evaluation Criteria is the required "catalytic" nature of the technology to leverage funding from the DOE LPO towards replicable projects, the preliminary site selection process, and the project team's prior experience and qualifications to execute the proposed project. Key to the DOE's Financial Evaluation Criteria is the applicant's utilization of the loan guarantee in funding the project, the project's ability to be financed without requiring a loan guarantee, the applicant's financial contributions to the project, and the project's existing federal support via grants, loan guarantees, or other support, such as acting as the customer or off-taker of the project (with such additional federal support and/or involvement being viewed negatively by the LPO). In assessing Programmatic Evaluation Criteria, the DOE LPO will evaluate the level of NEPA review required and compliance with Davis-Bacon and Cargo Preference Act of 1954 (or "Jones Act") requirements.

After being invited into due diligence, the applicant will file responses to the DOE LPO's requests for additional information. 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. Upon the completion of negotiations, the DOE LPO, in conjunction with the Office of Management and Budget (OMB), will calculate a final credit subsidy cost. The parties will then execute the loan guarantee agreement to finalize the transaction.

The DOE LPO will provide updated guidance prior to the release of the final solicitation as to whether applicants' credit subsidy costs will be paid by the DOE. At present, nearly \$170,000,000 in appropriated funds remains available for this purpose. These appropriated funds are likely to be drawn down in order of applicant awards, and their availability will depend on DOE LPO and OMB calculations of each application's credit subsidy cost. Accordingly, not all applicants may have their entire credit subsidy cost paid with appropriated funds. WSGR expects clarification from the DOE LPO in the coming weeks on this issue.

**Program Fees.** Fees associated with administering the technical and financial review and continuing administrative oversight of each guaranteed loan are detailed in the table on the following page:

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Fee	Loan Amounts Not Exceeding \$150,000,000	Loan Amounts Greater than \$150,000,000	Due Date
Part I Application Fee	\$50,000	\$50,000	Part I application submission
Part II Application Fee	\$100,000	\$350,000	Part II application submission
Facility Fee Part I	.25% of principal amount of guaranteed loan	.25% of principal amount of guaranteed loan up to \$150,000,000, and an additional .15% on the amount over \$150,000,000	Upon issuance of conditional commitment
Facility Fee Part II	.75% of principal amount of guaranteed loan	.75% of principal amount of guaranteed loan up to \$150,000,000, and an additional .45% on the amount over \$150,000,000	Upon execution of loan guarantee agreement
Annual Maintenance Fee	\$500,000 per year		Upon execution of loan guarantee agreement and annually thereafter
Credit Subsidy Fee	Forthcoming guidance from the DOE will determine whether applicants' credit subsidy costs will be paid by the DOE or applicant		Upon execution of loan guarantee agreement

**WSGR Insights and Recommendations.** The DOE LPO has continued its process of refining the application, execution, and oversight of the Title XVII program since the last awards to renewable energy projects three years ago, as well as throughout the solicitation process for the Advanced Fossil Solicitation. Notable updates include the significantly reduced application fees described above (when compared to the \$1 million total application fee in the Advanced Fossil Solicitation), restructuring application and facility fees to encourage smaller innovative projects, and broader evaluation of an application team's prior project experience away from specific project requirements.

Wilson Sonsini Goodrich & Rosati views these developments as favorable to potential applicants and encourages companies potentially interested in pursuing this program to submit comments to the draft solicitation via the DOE LPO website or attend one of the four public comment meetings. Potential applicants might keep in mind that, following the public comment period for the Advanced Fossil Solicitation, the DOE LPO restructured the originally proposed application fees and expanded the

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technology areas of interest for the final solicitation. This suggests that companies that might wish to pursue a loan guarantee for a new energy technology not currently listed in the draft solicitation should engage with the DOE during the comment period with a goal of having the technology included in the final solicitation. WSGR will continue to keep clients and other interested parties updated on this program. For more information regarding this alert, please contact one of the WSGR attorneys or advisors listed below:

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