

Clean Energy & Climate

E-ALERT

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DEPARTMENT OF ENERGY OPENS APPLICATION PROCESS FOR BILLIONS IN LOAN GUARANTEES AND EXERCISES RECOVERY ACT LOAN GUARANTEE AUTHORITY FOR THE FIRST TIME; TREASURY OPENS APPLICATION PROCESS FOR RENEWABLE ENERGY GRANTS IN LIEU OF TAX CREDITS

On July 29, 2009, the Department of Energy ("DOE" or "Department") announced that it will begin accepting applications for loan guarantees for renewable energy and transmission grid projects. DOE issued two solicitations. Its innovative technology solicitation includes \$8.5 billion in lending authority for innovative renewable energy projects, as well as \$2 billion in subsidy costs to support loans for innovative technologies that qualify for funding under the American Recovery and Reinvestment Act of 2009 ("ARRA" or "Recovery Act"), and \$500 million in ARRA subsidy costs to support loans for leading edge biofuel projects.¹ The transmission infrastructure solicitation provides \$750 million in ARRA subsidy costs to support loans for certain large electric transmission infrastructure projects.

Both solicitations establish a competitive framework for the award of available funds. Therefore, interested parties should move quickly to capitalize on these opportunities. We offer more information about each solicitation below.

I. INNOVATIVE TECHNOLOGY SOLICITATION

The innovative technology solicitation is significant not only because of the amount of funding provided for eligible projects, but also because it provides additional clarity on the extent to which rules for guarantees under DOE's established program for innovative technologies ("Section 1703") apply to the expanded guarantee program created by the ARRA ("Section 1705"). As discussed below, the solicitation explicitly addresses similarities regarding finance requirements and differences in threshold determinations and eligible technology categories. The solicitation also provides guidance to Section 1705 applicants on credit subsidy costs and construction requirements. Finally, it establishes a rolling application process designed to benefit first movers.

Finance Requirements. The solicitation makes clear that Section 1705 projects will be required to comply with the finance requirements applicable to Section 1703 projects. Under these rules, DOE will guarantee no more than 80% of total project costs and the borrower and other principals must make a significant equity (i.e., cash) investment in the project. DOE will analyze projects on a limited recourse project financing basis and will not assume any pre-construction risks. DOE will consider a variety of financing structures, including corporate financings, so long as the structures provide DOE with a reasonable prospect of repayment on the guaranteed obligations and the

¹ Solicitations that provide subsidy costs open the door to applications for loan guarantees. Because of the way subsidy costs are calculated, it is not possible at this time to quantify the value of the loan guarantees these solicitations will support.

structure provides sufficient resources to carry out the project.

Threshold Determinations. No loan guarantees may be issued under Section 1703 for a project where funds, personnel, or property of any Federal agency, instrumentality, personnel or affiliated entity are expected to be used. This restriction does not apply to guarantees issued under Section 1705 which receive ARRA funds to cover credit subsidy costs. However, all Section 1705 projects must commence construction on or before September 30, 2011 and create or retain jobs in the United States.

Technology Categories. There are nine categories of projects eligible for Section 1703 funding: (1) alternative fuel vehicles; (2) biomass; (3) efficient electricity transmission, distribution and storage; (4) energy efficient building technologies and applications; (5) geothermal; (6) hydrogen and fuel cell technologies; (7) energy efficiency projects; (8) solar; and (9) wind and hydropower. Because Section 1705 provides guarantees only for renewable energy systems projects, electric power transmission systems projects, and leading edge biofuels projects, guarantees under this solicitation will be issued for projects that fall in categories 2,3,5,8 or 9, but not for projects that fall in categories 1, 4, 6 or 7.

Credit Subsidy Costs. The advantage of securing a guarantee under Section 1705 is that ARRA funds are available to cover the project's credit subsidy cost.² DOE's solicitation cautions applicants not to presume their projects will be eligible for guarantees under Section 1705 and directs them to prepare two business plans, one which presumes the credit subsidy cost will be paid by the applicant and the other that presumes the credit subsidy cost will be covered by ARRA funds.

Construction. As noted, loan guarantees are available under Section 1705 only for projects that commence construction on or before September 30, 2011. To satisfy this requirement, the borrower must receive all necessary licenses, permits and local and national and environmental clearances, complete all pre-construction design and prototype testing, engage all required contractors, and order all necessary essential equipment and supplies so that physical construction has commenced or may commence by September 30, 2011. If a Section 1705 applicant fails to satisfy this requirement, DOE may terminate any guarantee or conditional commitment that is issued or offer the applicant the option to pay the credit subsidy costs for its project at closing.

Application Process. The solicitation provides for a two part application process. During the first part of the application process, applicants must provide summary level detail on the project, project eligibility, financing strategy, and progress to date. Applicants must pay 25% of the nonrefundable application fee when they submit Part I of their application. Part II of the application process will require applicants to provide more detailed information to facilitate DOE's due diligence review. The remaining 75% of the application fee must be paid when applicants submit their Part II applications.

DOE has established seven rounds of review for Part I and Part II submissions. The deadline for the first Part I submission is September 14, 2009, and the deadline for the first Part II submission is November 13, 2009. An applicant may submit its Part II application at any time after DOE notifies the applicant that its Part I application is complete and that DOE has determined that its project is eligible for a guarantee. All Part II applications submitted in a round will be evaluated against all other Part II applications submitted during that round. Because applications will be reviewed on a continuous basis as soon as they are received, applicants in earlier rounds will obtain an advantage in order

² The credit subsidy cost is the net present value of the estimated cost to the U.S. government of the loan guarantee as determined under the applicable provisions of the Federal Credit Reform Act of 1990, as amended.

and priority of review. The solicitation will remain open until the \$8.5 billion is fully obligated.

II. TRANSMISSION INFRASTRUCTURE SOLICITATION

The solicitation for \$750 million in subsidy costs that will support loan guarantees for commercial transmission infrastructure projects is similar in many material ways, but there are some differences. Specifically, while some important finance requirements carry over to this solicitation, the application of the “commence construction” requirement and the application process itself differ.

Finance Requirements. Like the innovative technologies solicitation, this solicitation provides that DOE will guarantee only 80% of total project costs and the borrowers and other principals must make significant equity investments in the project. DOE will analyze these applications on both a corporate financing and limited recourse project financing basis, but will consider other structures that provide a reasonable prospect of repayment. DOE will not assume pre-construction risks.

Construction. This solicitation defines “commence construction on or before September 30, 2011” the same way as the innovative technologies solicitation. However, if a project fails to satisfy this requirement DOE must terminate any outstanding loan guarantee agreement or conditional commitment because it will not be authorized to proceed with the funding.

Application Process. Like the innovative technologies solicitation, the transmission infrastructure solicitation application process will consist of two parts. Part I will provide a summary level description, while Part II will provide more detail to assist DOE in its due diligence review. Also, 25% of the non-refundable deposit fee will be due with an applicant’s Part I application, and the remaining 75% will be due with the Part II application.

Unlike the innovative technologies solicitation, however, there is only one round for Part I submissions. These submissions must be received by DOE on September 14, 2009.³ There are, however, three rounds for review of Part II submissions, and the deadline for the first round of Part II submissions is October 26, 2009. Part II submissions are evaluated against all other Part II submissions submitted in the same round. DOE will review the applications on a systematic and continuous basis that gives an advantage to first movers.

The solicitations can be found at <http://www.lgprogram.energy.gov/2009-ren-energy-sol.pdf> and <http://www.lgprogram.energy.gov/2009-CPLX-TRANS-sol.pdf>.

III. RENEWABLE ENERGY GRANTS IN LIEU OF CERTAIN TAX CREDITS

In addition to the loan guarantee program described above, the ARRA also created “Renewable Energy Grants” to help fund eligible renewable energy facilities. Section 1603 of the ARRA provides for non-taxable grants, in lieu of an investment tax credit or production tax credit, equal to thirty percent or ten percent, depending on the nature of the facility, of the applicant’s basis in facilities that produce electricity from certain renewable sources including wind, biomass, geothermal energy, solar energy, municipal waste, and other sources identified in the Act. These grants are available for facilities placed in service between January 1, 2009, and Dec. 31, 2010, or for which construction

³ DOE’s solicitation states once that Part I applications are due on September 8, 2009, but all other references to the Part I due date use September 14, 2009.

begins during this period and are placed in service prior to the applicable credit termination date. On July 31, 2009, Treasury began accepting grant applications at <https://treas1603.nrel.gov>. Covington issued a detailed description of the renewable energy grant program in an e-alert dated July 10, 2009.

If you have any questions concerning the material discussed in this client alert, please contact the following members of our Clean Energy & Climate practice group:

Robert Fleishman	202.662.5523	rfleishman@cov.com
George Frampton	212.841.1260	gframpton@cov.com
William Massey	202.662.5322	wmassey@cov.com
Daniel Luchsinger	202.662.5175	dluchsinger@cov.com
Whitney Meehan	202.662.5813	wmeehan@cov.com

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