

# Clean Energy and Climate

## E-ALERT

October 30, 2009

### **DEPARTMENT OF ENERGY ANNOUNCES FINANCIAL INSTITUTION PARTNERSHIP PROGRAM TO PROVIDE LOAN GUARANTEES TO CONVENTIONAL RENEWABLE ENERGY GENERATION PROJECTS**

The Department of Energy ("DOE") recently announced a much anticipated solicitation to provide loan guarantees to support conventional renewable energy generation projects, including solar, wind, biomass, geothermal, landfill gas, waste-to-energy, and hydropower. The solicitation provides up to \$750 million to cover the credit subsidy costs for eligible projects, which is expected to support up to \$8 billion in loan guarantees.

The solicitation, announced on October 7, 2009, is the first to be implemented under DOE's Financial Institution Partnership Program ("FIPP"), under which qualified financial institutions may apply jointly with borrowers and project sponsors. The objective of FIPP is to expedite DOE's loan guarantee underwriting process and leverage private sector resources and financing for the rapid deployment of renewable energy projects.

#### **ELIGIBLE COMMERCIAL TECHNOLOGY PROJECTS**

Prior solicitations for renewable energy generation projects have focused on new or innovative technologies not in general use in the marketplace. This announcement, however, is aimed at "shovel ready" renewable energy generation projects that employ commercial technology such as wind, solar, biomass, geothermal, and hydropower. A "commercial technology" is one that has been installed and is being used in three or more commercial projects in the same, or a substantially similar, general application as the proposed project, and has been in operation in each such commercial project for a period of at least two years.

In addition to meeting the criteria for commercial technology, eligible projects must: (1) commence construction on or before September 30, 2011; and (2) have a credit rating equivalent to a "BB" from Standard & Poor's or Fitch or a "Ba2" from Moody's, as evaluated without the benefit of any DOE guarantee or any other credit support not available to DOE.

DOE will not issue loan guarantees for projects that have already completed construction or to support refinancing of projects that have already been fully financed. However, if a project has begun construction before the issuance of a loan guarantee, it may still be eligible for a loan guarantee unless it has received a conditional commitment for post-construction financing.

#### **FINANCIAL INSTITUTION PARTNERSHIP PROGRAM**

Under this first FIPP solicitation, project sponsors and borrowers do not apply directly to DOE, but instead work with a financial institution that satisfies the qualifications of an eligible lender. The financial institution (or group of financial institutions) then applies directly to DOE. Although collaboration is expected, the financial institution is expected to have the lead role in developing the overall

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financial structure of the proposed project and the specific terms of the guaranteed obligations.

The solicitation contained several financing limitations:

- The loan guarantee will only cover 80% of the maximum aggregate loan principal and interest during the loan term. Because DOE will only guarantee loans up to 80% of the total project cost, a guarantee under the FIPP process will only cover up to 80% of the 80% maximum project loan (or 64%), leaving financial institutions and project sponsors with some risk.
- Qualified financial institutions will share the risk associated with each loan under FIPP on a pari passu basis with DOE as the guarantor.
- The guaranteed obligation is expected to be "traditional" senior secured debt, structured in accordance with customary market terms applicable to a high quality limited or non-recourse long-term energy project finance transaction, and not modified to accommodate tax-oriented investment structures.
- There are numerous transfer restrictions on the debt. However, the guaranteed portion of the debt may be "stripped" from the non-guaranteed portion of the debt.
- DOE will have the exclusive right to exercise all voting and control rights under the loan agreement and will retain exclusive control over amendments, waiver, acceleration of the debt, and the exercise of remedies.

### APPLICATION PROCESS

The solicitation provides for a two-part application process. During the first part of the application process, applicants must provide a general overview of the project, the project's eligibility and creditworthiness, a description of the proposed financing structure, and progress to date. Applicants must pay 25% of the nonrefundable application fee (\$12,500) 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 (\$37,500) must be paid on submission of Part II.

Part I applications may be submitted at any time and will be reviewed on a rolling basis. Assuming DOE confirms that the application is complete and authorizes the applicant to proceed to Part II, an applicant must submit Part II during one of ten competitive rounds, the first of which begins on November 23, 2009, and the last on January 6, 2011. It is important to note that because applications will be reviewed on a continuous basis, applicants in earlier rounds of Part II will obtain an advantage in order and priority of review.

We anticipate that this program should help accelerate project consideration and therefore elicit more applications. Although DOE's guarantee of loans only up to 80% of the total project cost will present an issue for lenders, the fact that the guaranteed portion can be securitized should be an important incentive for lenders to get involved.

The solicitation can be found by clicking [here](#).

If you have any questions concerning the material discussed in this client alert, please contact the following members of our clean energy and climate group:

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