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## New Loan Guarantee Funding for Renewable Energy Projects

On July 29, 2009, the Department of Energy (DOE) issued new solicitations for loan guarantees supporting the new and innovative energy technologies program and the advanced transmission and distribution program. The solicitations, which are based on the combined authority of the Energy Policy Act of 2005 (EPACT) and the American Recovery and Reinvestment Act of 2009 (ARRA), make funding available for loan guarantees under Section 1703 of EPACT as well as funding to pay Credit Subsidy Costs under Section 1705, added to EPACT by ARRA. Under the innovative technology solicitation, $2.5 billion in Credit Subsidy Cost funding (the amount typically paid by the borrower that the DOE must hold in reserve against the net present value of possible losses on the guarantee) and an additional $8.5 billion in loan guarantee authority were made available.

A third and highly anticipated solicitation covering commercial renewable energy technologies is due for release later in August, though how this last solicitation will be funded is now an issue. While both the White House and congressional leaders have promised to return the funding to the loan guarantee program, the House and Senate have passed an extension of the "Cash for Clunkers" program by appropriating $2 billion of the remaining loan guarantee funding.

The solicitation for innovative energy technologies was one of two important programs to officially open during the last week of July. On July 31, the Treasury opened the application process for Section 1603 Grants in Lieu of Investment Tax Credits for renewable energy projects. This loan guarantee solicitation and the 1603 Grant program, together with the forthcoming solicitation for commercial renewable projects, will provide an important boost to the financing prospects for many renewable energy projects.

To qualify for Credit Subsidy Cost funding under Section 1705 a project: 1) must fall within one of three categories: i) renewable energy generation or the manufacture of related components; ii) electric power transmission systems, including upgrading and reconductoring projects; or iii) leading edge biofuels projects; 2) must have started being constructed by September 30, 2011; and 3) must employ new or significantly improved technology. In addition, the technology must be commercially ready with six months of actual operations together with 1,000 to 2,000 hours of operating data, and the applicant must identify and control the project site.

Projects that are based on new or significantly improved technology and meet the operations and site requirements, but otherwise fail to qualify for 1705 Credit Subsidy Cost funding, may still be eligible for loan guarantees under Section 1703. This sections requires that the applicant is willing to pay the Credit Subsidy Costs, can show that standard commercial lending terms are not available, and the project is based on one of nine technologies:

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
9. Wind and Hydropower

Awards for Credit Subsidy Cost funding under Section 1705 and loan guarantees under Section 1703 will be made on a competitive basis. Loan guarantees can not exceed 80% of total project costs. The guaranteed loans must be in the first lien position and not subject to any subordination, and there also must be a reasonable prospect of repayment.

*Application Process*

In this round of loan funding available from the DOE, the application process has been significantly streamlined from the earlier process used under the original EPACT loan guarantee program. Applications will be submitted in two parts through an online application process. Part I and Part II will request substantially the same type of information (applicant viability, project technology and viability, financing plans, etc.), but Part I will request summaries and general information, while Part II will require more detailed information from applicants. Applications can be submitted, and will be reviewed, on a rolling basis. Part I and Part II submission dates are as follows:

| Round | Part I Submission Due | Part II Submission Due Date |
|---|---|---|
| 1 | September 14, 2009 | November 13, 2009 |
| 2 | October 22, 2009 | January 15, 2010 |
| 3 | December 23, 2009 | March 12, 2010 |
| 4 | February 18, 2010 | May 14, 2010 |
| 5 | April 22, 2010 | July 19, 2010 |

| | | |
|---|---|---|
| 6 | June 24, 2010 | September 17, 2010 |
| 7 | August 24, 2010 | December 31, 2010 |

The corresponding Part II submission to any Part I application can be submitted during any subsequent Part II submission period, provided it is submitted before the final submission deadline of December 31, 2010. Applicants are encouraged to apply as soon as possible as funds are disbursed on a first-come, first-serve basis. Applicants should be sure to submit a complete and thorough application, rather than rushing to meet an earlier Part II submission deadline. Applicants can submit multiple applications for projects focusing on different technologies. If a project fails to qualify for loan funding, the applicant can reapply with new or updated information in a subsequent round.

If an application passes the Part I and Part II review and selection process, the DOE will then undertake a detailed due diligence and underwriting process to verify the worthiness of the project, including: the financing plan; financial viability; technical efficacy; the project's legal structure; project risks; a financial model review and stress-testing; the strength and weakness of project sponsors; the proposed collateral; and the environmental impact of the proposed project.

*Cost*

The application process is a significant investment. Though there is no set minimum project size, the application fees and transaction costs incurred to obtain a loan guarantee are high enough that the program is likely best used by applicants with more than $20 million in qualifying project costs. A small business program is under development by the DOE to facilitate financing smaller renewable projects.

There are three tiers of Application fees: $75,000 for projects under $150 million, $100,000 for projects between $150 million and $500 million, and $125,000 for projects greater than $500 million. Twenty-five percent of the Application fee of is due with Part I, while the balance is due with the submission of Part II. There is also a Facility fee, which is 1% of the guaranteed amount for loan guarantees under $150 million ranging up to $1.625 million and .50% of the guaranteed amount for loan guarantees over $500 million. Twenty percent of the Facility fee is due upon execution of the Term Sheet and the remaining eighty percent is due upon closing. Additionally, a maintenance fee will also be required to cover DOE's administrative costs, in the range of $50,000 to $100,000 per year.

*Selection Criteria*

As noted above, the DOE review will be competitive. Once it is determined that a project meets the eligibility criteria, the selection process will be based on:

| **Factors** | **Detail** | **Weighting** |
|---|---|---|
| **Technical** | | |
| | Technical Relevance and Merit | 15.0% |
| | Applicant Capabilities, Technical Approach and Work Plan | 20.0% |
| | Environmental Benefits | 15.0% |
| **Financial** | | |
| | Creditworthiness | 30.0% |
| | Construction Factors | 10.0% |
| | Legal and Regulatory Factors | 10.0% |

The DOE will also consider the technical diversity of the project as well as the most efficient and competitive use for loan guarantees. While there is a set benchmark for the guarantee limited to no more than 80% of the total projects costs, higher equity ratios will likely be reviewed more favorably during the selection process. It is also worth noting that, irrespective of the equity contribution made, an applicant's operating equity will also be an important factor, and the DOE has recommended that an applicant have 10% of the project costs available in cash to fund the project.

*Additional Considerations*

Successful applicants that receive loan guarantee funding under this program also need to comply with other statutory requirements. All projects must meet the extensive general reporting requirements of ARRA, as well as the National Environmental Policy Act (NEPA). Compliance with NEPA poses additional hurdles in meeting the deadline requirements for the loan guarantee program given the historical pace of NEPA processes. Additionally, projects qualifying for Credit Subsidy Cost funding under Section 1705 must meet the prevailing wage requirements of the Davis-Bacon Act and, potentially, the Buy American provision of ARRA.

Time is of the essence for this solicitation, as the deadline for the first round of Part I applications is September 14, 2009. The attorneys in Venable's regulatory group are available to assist with exploring new funding opportunities for renewable energy projects under this and other programs and can help navigate the opportunities and challenges of the changing energy landscape.

The DOE Loan Guarantee Solicitation for Innovative Technologies can be found here: http://www.lgprogram.energy.gov/2009-ren-energy-sol.pdf.

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