

Department of Energy to Support Advanced Fossil Energy Projects

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On July 2, 2013, the U.S. Department of Energy (DOE) announced the release of a draft loan guarantee solicitation intended to support advanced fossil energy projects in the United States that avoid, reduce or sequester air pollutants or anthropogenic emission of greenhouse gases and employ “new or significantly improved technology” (the Advanced Fossil Energy Solicitation). DOE has requested public comment on the draft Advanced Fossil Energy Solicitation by September 9, 2013, and is particularly interested in receiving comments regarding the technologies that DOE identifies in the draft Advanced Fossil Energy Solicitation, identifying other technologies within DOE’s statutory authority that DOE should consider supporting through the Advanced Fossil Energy Solicitation, and regarding the various weighting percentages to be allocated to each application evaluation category.

The following memorandum contains a brief summary of the eligibility requirements rules and application information for the Advanced Fossil Energy Solicitation. Please refer to the draft Advanced Fossil Energy Solicitation for complete rules and application procedures, available at <http://lpo.energy.gov/>.

I. Background on DOE’s Loan Guarantee Programs

Title XVII of the Energy Policy Act of 2005 established DOE’s innovative technologies loan guarantee program (the Section 1703 Program), which is designed to support projects that are unable to obtain conventional private sector financing due to high technology risks.

The Advanced Fossil Energy Solicitation is authorized through the Section 1703 Program. Notably, DOE anticipates that projects approved pursuant to the Advanced Fossil Energy Solicitation will require the applicant to directly pay the nonrefundable Credit Subsidy Cost. The Credit Subsidy Cost is the amount that DOE must hold in reserve to cover estimated losses in accordance with the Federal Credit Reform Act of 1990, which is calculated by DOE on a case-by-case basis for each project. Congress has not appropriated any funds to cover the Credit Subsidy Cost for loan guarantees made under the Section 1703 Program, and DOE does not expect to request appropriated amounts to cover the Credit Subsidy Cost. Therefore, it is anticipated that applicants to the Advanced Fossil Energy Solicitation will pay the Credit Subsidy Cost directly, prior to closing.

II. Program Information

Under the Advanced Fossil Energy Solicitation, DOE will provide direct loan guarantees for eligible advanced fossil energy projects by making available up to \$8 billion in loan guarantee authority. DOE’s authority to issue this amount of loan guarantees was provided by the Omnibus Appropriations Act, 2009, P.L. No. 111-8, as amended, and such amount will remain available until committed.

Applicable Regulations

In 2007, DOE adopted Final Regulations (the Title XVII Regulations) to implement its loan guarantee authority under Title XVII of the Energy Policy Act of 2005. The Advanced Fossil Energy Solicitation is subject to the provisions of the Title XVII Regula-

tions and other applicable laws, which prescribe, among other requirements, that: applications are to be submitted directly to DOE; loan guarantees may not exceed 80 percent of total project costs; the term of the loan guarantee may not exceed the lesser of 30 years or 90 percent of the projected useful life of the project assets; the guaranteed loan may not be subordinate to any loan or other debt obligation and must be senior secured debt; the applicant is required to make representations and warranties, agree to covenants, and satisfy conditions precedent to closing and to each disbursement that, in each case, relate to its compliance with the Davis Bacon Act; and that projects that receive DOE loan guarantees are subject to the National Environmental Policy Act (NEPA), which most likely requires applicants to obtain an Environmental Assessment (performed by an independent consultant) to determine the likelihood of a significant environmental impact. If the project is likely to cause a significant environmental impact, applicants are required to prepare an Environmental Impact Statement, which could take 12-15 months.

Eligible Projects

An Eligible Project under the Advanced Fossil Energy Solicitation is a project or facility located in the United States that:

- (1) Uses advanced fossil energy technology (including coal gasification that meets the emissions requirements of Section 1703 of Title XVII); and is described in one or more of the following technology areas: (a) advanced resource development; (b) carbon capture; (c) low-carbon power systems or (d) efficiency improvement; and
- (2) Meets the following requirements:
 - is a project or facility that avoids, reduces or sequesters air pollutants or anthropogenic emission of greenhouse gases; and
 - is a project or facility that employs “New or Significantly Improved Technology” (which DOE defines as a technology concerned with the production, consumption or transportation of energy technologies that has not been used in three or more commercial projects in the United States in the same general application as the proposed project and been in operation in each such commercial project for at least five years) in service in the United States at the time a binding financing term sheet is issued by DOE.

The following sample list of potential types of Eligible Projects is provided in the draft Advanced Fossil Energy Solicitation for illustrative purposes:

- (1) Advanced Resource Development
 - Novel oil and gas drilling, stimulation, and completion technologies, including dry fracking, that avoid, reduce or sequester air pollutants or anthropogenic emission of greenhouse gases;
 - Use of associated gas production to reduce flaring;
 - Coal-bed methane recovery to reduce methane emissions into the atmosphere associated with coal mining;
 - Underground coal gasification;
 - Methane emissions capture from energy production, transmission or distribution;

(2) Carbon Capture

- CO₂ capture from synthesis gases in fuel reforming or gasification processes;
- CO₂ capture from flue gases in traditional coal or natural gas electricity generation;
- CO₂ capture from effluent streams of industrial processing facilities;

(3) Low-Carbon Power Systems

- Coal or natural gas oxycombustion;
- Chemical looping processes;
- Hydrogen turbines;
- Synthesis gas-, natural gas- or hydrogen-based fuel cells;

(4) Efficiency Improvement

- Combined heat and power;
- Waste heat recovery on industrial facilities; and
- High-efficiency distributed fossil power systems.

Application Process

DOE's competitive loan guarantee application process consists of three general phases: (1) submission of a Part I Application, (2) submission of a Part II application and due diligence, and (3) loan guarantee documentation. Part I Applications may be submitted by any one of six application deadlines to be set forth in the Advanced Fossil Energy Solicitation. Applicants for projects that, in DOE's Part I evaluation, are deemed eligible and ready to proceed, will then be invited to make a Part II submission. Part II Applications may be submitted, after invitation from DOE, by one of the six application deadlines to be set forth in the Advanced Fossil Energy Solicitation. DOE will make decisions as to whether to begin due diligence on projects competitively evaluated during a given round of Part II reviews after the closing of such round.

In determining to make guarantees to proposed projects under the Advanced Fossil Energy Solicitation, DOE shall consider financial, technical, policy and programmatic factors. As noted above, DOE has stated that it is interested in receiving comments regarding the weighting percentage to be allocated to each evaluation category, as such percentages have not been proposed in the draft Advanced Fossil Energy Solicitation.

DOE expects to use independent consultants and outside legal counsel in all phases of the application process. Applicants are responsible for paying all fees and expenses of such independent consultants and outside legal counsel.