

New York State Issues RFP to Deploy \$200 Million for Clean Energy Projects

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On February 5, the newly created New York State Green Bank issued its first request for proposals for clean energy projects in the state looking to access the Green Bank's range of credit facilities. The Green Bank is seeking to deploy approximately \$200 million to facilitate clean energy projects in New York state, and the RFP requests proposals from both industry participants and financial institutions or other third-party capital providers. This memorandum provides background on the Green Bank and its recent RFP, the types of projects it will support and the range of financial instruments it will use.

Background

In January 2013, Gov. Andrew Cuomo announced his intention to create a New York State Green Bank to help the state overcome financial and informational market barriers to investments in energy efficiency and renewable energy. Gov. Cuomo appointed Richard Kauffman to oversee the state's energy finance efforts. Kauffman will serve as chair of both a newly formed Energy Finance Sub-Cabinet and the New York State Energy Research and Development Authority (NYSERDA), a public benefit corporation that provides research, analysis, funding and expertise to support innovation and enhance the reliability and sustainability of New York's energy system. The Green Bank will operate as a separate division within NYSERDA, and in November 2013 Gov. Cuomo appointed Alfred Griffin as Green Bank President.

In creating the Green Bank, the state aims to leverage private capital to accelerate development of clean energy projects. Unlike other programs, the Green Bank will not provide traditional subsidies but will offer credit support through various investments intended to preserve and build on its capital base, allowing it to recycle capital into future projects. The state has directed more than \$200 million in initial seed capital for the bank, with the Public Service Commission approving \$165 million in funds redirected from other programs, and another \$50 million coming from Regional Greenhouse Gas Initiative revenues. While the state may provide additional capital in the future, the goal is for the Green Bank to recycle funds and continue as a self-sustaining entity over time. Toward that end, the Green Bank will screen for credit quality and viable revenue streams in projects applying for support.

Eligible Projects and Participants

The Green Bank's first RFP is open-ended in terms of the types of clean energy projects eligible to participate, and the nature of the financial products that the Green Bank may provide to support clean energy deployment.

The RFP seeks proposals from industry participants and financial institutions for a wide range of clean energy projects using commercially proven technologies. Clean energy is broadly defined to include solar photovoltaic, solar thermal, on-shore and off-shore wind, hydroelectric facilities (either upgrades or repowering, or new run-of-river projects), biomass, biothermal, biogas, liquid biofuels from certain

feedstocks, tidal power and a variety of forms of energy efficiency improvements for new and existing commercial, industrial, residential and multifamily buildings.¹ Eligible efficiency projects could include both physical renovations such as HVAC, lighting and appliance upgrades, building envelopes, home retrofits and industrial process efficiency improvements, as well as energy management and control systems, such as advanced home energy monitoring and metering systems.

The RFP also is open to projects with a wide array of financing arrangements. The Green Bank will provide financial support both to individual projects and to portfolios of clean energy projects located in New York. Since the Green Bank aims to leverage private capital to ensure maximal returns on public funds, all Green Bank transactions must include participation by one or more private sector parties. The Green Bank envisages a role as a direct lender to projects (whether senior, mezzanine or subordinated), as a credit enhancement provider through reserve accounts, junior interests, loan guarantees or other mechanisms, and as a warehouse provider facilitating the aggregation and securitization of financings for eligible projects. Bidders are invited to propose the form (or alternative forms) of financial support that the Green Bank is requested to provide.

Selection Process and Criteria

The RFP includes no timeline for submitting proposals, which will be evaluated on an ongoing basis. The RFP is open to both direct and indirect market participants and consortia of participants, including project developers, energy savings companies, equipment manufacturers involved in clean energy projects and parties providing financing to these projects. Selected proposals will be invited to discuss entering into a “letter of interest” leading to further discussion, due diligence and negotiation of business terms.

A committee evaluating RFP responses will assess projects both for credit quality and financial considerations, as well as the projects’ expected ability to help the Green Bank reach its goals. The Green Bank will consider providing innovative financial structures tailored to individual projects but also seeks replicable models, in furtherance of its goal of creating a self-sustaining scalable market. Participation terms will be negotiated for each project, based in part on its credit risk profile, the market context in the project’s industry and region, and the potential for the project to make efficient use of capital in contributing to the Green Bank’s goals.

The RFP emphasizes the Green Bank’s desire to assist in overcoming market barriers and achieving market scale to increase clean energy deployment. Accordingly, proposals will be evaluated in part based on the leverage ratio of private capital to Green Bank investment, the project’s contribution to long-term sustainable markets through increasing awareness, or developing new models with the potential to scale or replicate, and cost-effectiveness and efficiency in producing desired energy savings and environmental benefits. Projects will also will be evaluated, among other things, on their fit within the Green Bank’s portfolio with respect to its risk profile and technological and geographic diversity.

Skadden has extensive experience working on innovative public-private partnerships in energy and infrastructure. We recently advised various lenders, developers, and other private and public sector entities in connection with numerous transactions under the U.S. Department of Energy’s Loan Guarantee Program, and the U.S Department of Transportation’s Transportation Infrastructure and Innovation Act (TIFIA) program. We would be pleased to speak with you about how we can help you design proposals for Green Bank financing that are responsive to the RFP.

¹ The RFP and its attachments do not specify whether conventional corn-based ethanol would qualify for Green Bank support. Nuclear, municipal solid waste, and adulterated biomass or biofuels are specifically excluded.