



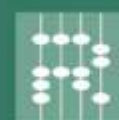
Redacted Brief of 85-Page Guidance: Loan Guarantee Solicitation for Renewable Energy and Advanced Transmission and Distribution Technologies

WHITE PAPER

Reznick Renewable Energy Practice

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I. Solicitation Description - §1705 Program¹

A. Purpose of Solicitation

The U.S. Department of Energy (DOE) announced up to an additional \$30 billion in loan guarantees for renewable energy projects as part of the new section 1705 program, created in the American Recovery and Reinvestment Act of 2009, authorizing a new program for rapid deployment of renewable energy and electric power transmission projects.

The Section 1705 Program is designed to address the current economic conditions of the nation, in part, through rapid deployment of renewable energy and transmission projects.

Of the \$5,965,000,000 made available under §1705 of the Recovery Act, DOE will make available up to \$2,500,000,000 under the Solicitation to pay the Credit Subsidy Costs of loan guarantees made for 1705 Eligible Projects, of which up to \$500,000,000 is set aside to pay for the Credit Subsidy Cost for Leading Edge Biofuels Projects defined below.

Note however, that under Section 1705(d), the authority to enter into guarantees for section 1705 Eligible Projects expires on September 30, 2011.

It is possible that the full loan guarantee process will not be completed with respect to a 1705 Eligible Project prior to the expiration of the authority under Section 1705 to enter into guarantees.

The Solicitation is specifically designed to support those 1705 Eligible Projects that are the most assured of commencing construction, and hence having a loan guarantee issued, *no later than* September 30, 2011, consistent with the requirement in Section 1705(a).

In the event a 1705 Eligible Project is reasonably likely *not* to commence construction on or prior to September 30, 2011, or fails to meet some other requirement of Section 1705 of the Recovery Act, the project may still be able to proceed with the old DOE loan guarantee process under Section 1703 of Title XVII if the applicant pays the project's Credit Subsidy Cost in accordance with Section 1702(b)(2) of Title XVII.

B. Background of Loan Guarantee Program

Only three categories of projects that commence construction no later than September 30, 2011 are eligible under Section 1705 and may have their Credit Subsidy Costs covered by appropriated funds under the Recovery Act:

- (1) "renewable energy systems, including incremental hydropower, that generate electricity or thermal energy and facilities that manufacture related components" ("Renewable Energy Systems Projects"),
- (2) "electric power transmission systems projects, including upgrading and reconductoring projects ("Electric Power Transmission Systems Projects"), and
- (3) "leading edge bio-fuel projects that will use technologies performing at the pilot or demonstration scale that the Secretary determines are likely to become commercial technologies and will produce transportation fuels that substantially reduce life-cycle greenhouse gas emissions compared to other transportation fuels" ("Leading Edge Biofuels Projects").

The Office of Management and Budget ("OMB") has issued its Updated Implementing Guidance for the Recovery Act (M-09-15) and Updated Implementing Guidance for the Reports on Use of Funds Pursuant to the Recovery Act (M-09-21) (collectively referred to herein as the "OMB Implementing Guidance") and will be issuing additional guidance concerning the Recovery Act.

¹ §1703 is generally not discussed here.

Applicants should consult the DOE website, <http://www.whitehouse.gov/omb>, and the Recovery Act website, <http://www.energy.gov>, the OMB website <http://www.recovery.gov>, regularly to keep abreast of guidance and information as it evolves.

C. Finance Considerations for Applications

Loan guarantees issued under Section 1705 must satisfy specific finance requirements as set forth in the Final Regulations, particularly Section 609.10(d)(3) through (10) and (13) thereof, which must be addressed by the applicant in responding to this Solicitation.

DOE expects that the information requested under this Solicitation, and the documentation produced as a result of negotiations, will conform substantially in scope, quality and detail with the information typically requested and documentation typically produced during the course of an arm's length, commercially negotiated project or commercial financing of this scale.

DOE is mandated by Title XVII to ensure that projects financed have a reasonable prospect of repayment by the borrower of the principal and interest on the Guaranteed Obligations and other project debt and that the guaranteed portion of the Guaranteed Obligation, together with amounts available to the applicant from other sources, will be sufficient to carry out the project.

DOE expects to analyze projects primarily on a limited recourse project financing basis.

Under such an approach, DOE will not assume any pre-construction risks.

DOE is prepared to consider a variety of financing structures as presented by applicants as long as the proposed structure provides DOE with a reasonable prospect of repayment by the borrower of the principal and interest on the Guaranteed Obligations and other project debt and that the guaranteed portion of the Guaranteed Obligation, together with amounts available to the applicant from other sources, will be sufficient to carry out the project and otherwise satisfies Title XVII, including Section 1703, the Final Regulations and the Solicitation and, if a 1705 Eligible Project, also Section 1705 and the Recovery Act.

Loan guarantee structures that fall outside the classic limited recourse project finance approach, such as corporate financings, but that meet the above criteria and assist both DOE and the applicant in efficiently meeting the objectives of Title XVII and, if applicable, the Recovery Act, are encouraged.

II. Eligibility Information

Before seeking a loan guarantee, applicants are strongly encouraged to verify that their proposed projects are not eliminated by any of the threshold determinations set forth in Section 609.7(a) of the Final Regulations. Solely with respect to projects proposed as 1705 Eligible Projects, such projects will be denied if:

- (1) The project proposed as a 1705 Eligible Project will not commence construction on or before September 30, 2011 (as defined below).
- (2) The project will not create or retain jobs in the United States.

The threshold determinations set forth in Section 609.7(a) of the Final Regulations, together with those set forth above with respect to projects proposed as 1705 Eligible Projects, shall hereinafter be referred to as "Threshold Determinations."

In addition, applicants must assure that all of the eligibility requirements listed below are met:

A. Eligible Applicants

An eligible applicant under this Solicitation includes any Applicant (as defined in Section 609.2 of the Final Regulations) seeking a loan guarantee under Section 1703 of Title XVII for an Eligible Project under this Solicitation.

B. Eligible Lenders

An eligible lender under this Solicitation shall satisfy the meaning set forth under the term “Eligible Lender” in Section 609.2 of the Final Regulations and meets the requirements set forth in Section 609.11 of the Final Regulations.

C. Project Costs

Project costs under this Solicitation shall have the meaning ascribed to the term “Project Costs” in Section 609.2 of the Final Regulations, and as specifically set forth in Section 609.12 of the Final Regulations.

E.1705 Eligible Projects

A 1705 Eligible Project is an Eligible Project under this Solicitation that constitutes a Renewable Energy Systems Project, Electric Power Transmission Systems Project, or Leading Edge Biofuels Project, in each case, located in the United States that (i) employs a New or Significantly Improved Technology, (ii) is reasonably likely, at the time of the submission of the Part I submission, to commence construction on or before September 30, 2011 and (iii) meets all requirements of Title XVII, including Sections 1703 and 1705, of this Solicitation and of the Final Regulations, as well as meets all applicable requirements of the Recovery Act.

For a bio-fuels project to constitute a 1705 Eligible Project that is a Leading Edge Biofuels Project, it must be designed to produce transportation fuels from biomass and similar sources that substantially reduce life-cycle greenhouse gas emissions compared to other transportation fuels.

Moreover, the technology utilized in Leading Edge Biofuels Projects as performing at the pilot or demonstration scale must be a New or Significantly Improved Technology that the Secretary, or his designee(s), determines is likely to become a commercial technology in order for the project to satisfy Title XVII's Section 1702(d) “reasonable prospect of repayment” requirement.

For purposes of the definition of “1705 Eligible Project,” the term “commence construction on or before September 30, 2011” means that the Borrower of such project has received all necessary licenses, permits and local and national environmental clearances necessary to proceed; has completed all pre-construction design and prototype testing; has engaged all required contractors and ordered all necessary essential equipment and supplies so that physical construction of such project has commenced or may commence on or before September 30, 2011.

New construction projects must commence construction, existing but postponed or interrupted construction projects must resume construction or proceed to commercial operation, and projects involving upgrades, improvements or enhancements to an existing commercial operation must commence such activity to initiate any such upgrade, improvement or enhancement, in each case, on or before September 30, 2011.

In the event a 1705 Eligible Project is reasonably likely not to commence construction on or prior to September 30, 2011, the project may still proceed with the loan guarantee process under Section 1703 of Title XVII if the applicant pays the project's Credit Subsidy Cost in accordance with Section 1702(b)(2) of Title XVII.

To facilitate 1705 Eligible Projects' compliance with the September 30, 2011 deadline, DOE shall require as a closing condition to the Conditional Commitment and Loan Guarantee Agreement that the applicant agree to commence any new construction, resume construction or proceed to commercial operation, or commence

such activity to initiate any upgrade, improvement or enhancement within 30 days of initial disbursement under a Loan Guarantee Agreement issued pursuant to Section 1705 but in no event later than September 30, 2011. If such commencement of construction does not occur, or is not reasonably likely to occur, on or before September 30, 2011, DOE

(a) may terminate

(i) the Loan Guarantee Agreement, or

(ii) any Conditional Commitment, if a Loan Guarantee Agreement has not been entered into by September 30, 2011, in each of (a)(i) and (ii), without any further obligations to the applicant, or

(b) may offer the option to the applicant to pay the Credit Subsidy Cost for its project at the closing.

Moreover, all Eligible Projects under this Solicitation that constitute 1705 Eligible Projects must also satisfy all requirements of the Recovery Act, including the following requirements:

1. **Davis Bacon Requirements:** Section 1705(c) requires that a recipient of support under Section 1705 provide the Secretary of Energy with reasonable assurance that all laborers and mechanics employed in the performance of a project for which assistance is provided, including those employed by contractors and subcontractors, will be paid wages at rates not less than those prevailing on similar work in the locality of the project, as determined by the Secretary of Labor in accordance with subchapter the "Davis Bacon Act".

2. **Recovery Act Reporting Requirements:** Section 1512 of the Recovery Act requires extensive reporting from the prime recipients of Federal funding.

Such recipient is required to report to DOE information relating to, among other things, numbers of jobs created and retained by the project, ten (10) days after the end of each calendar quarter. While OMB has issued interim guidance on these requirements at 2 CFR §176.40 to §176.50, the Government has not fully developed the implementing instructions of the Recovery Act. Applicants should consult the DOE website, www.energy.gov, the OMB website, <http://www.whitehouse.gov/omb/>, and the Recovery Act website, www.recovery.gov, regularly to keep abreast of guidance and information as it evolves.

All reporting is expected to be posted on www.recovery.gov. Agency-wide and program-specific plans are expected also to be posted on the agency's dedicated page for Recovery Act activities on the Recovery.gov website.

3. **Buy American:** Section 1605 of the Recovery Act prohibits the use of funds appropriated or otherwise made available by the Recovery Act for any project for the construction, alteration, maintenance, or repair of a **public** building or **public** work unless all of the iron, steel, and manufactured goods used in the project are produced in the United States.

In submitting their Part I and Part II submissions, ***Applicants should not presume their projects constitute 1705 Eligible Projects but should prepare their business plans, and financial models, in accordance with the instructions in Attachments A1 and A2 using, on the one hand, the presumption that the Credit Subsidy Cost will be paid by the applicant or the Project Sponsor and, on the other hand, that Recovery Act funds will cover the Credit Subsidy Cost in which case their financial model and business plans should take into account the cost of compliance with the Davis Bacon requirements of Section 1705(c) of Title XVII and, if applicable, the Buy American requirements.***

F. Commercialization Readiness

Pursuant to the Solicitation, DOE expects to receive applications for projects clearly demonstrating that the project is ready to proceed to commercialization.

Projects that are currently at the pilot stage or which have not completed a full-scale demonstration project, including the capture of appropriate data as to output, processes and costs, should **not** apply for a loan guarantee under this Solicitation.

Applicants must provide in their applications a minimum of 6 months operating and performance data, including 1,000 to 2,000 hours of operation data, obtained from their demonstration project. The demonstrated yield and throughput results must be supportive of the project's pro forma assumptions for the proposed commercial facility.

In addition, applicants must show in their applications that a site has been selected for the named project and that the applicant possesses control of the site, for example, through current ownership, through an option to purchase the land or through a lease agreement.

G. Technology Categories

DOE will consider as Eligible Projects those projects derived from the list of technology categories identified below and which fall within one of the two distinct project types described below. The solicitation provides an illustrative list of technologies potentially constituting New or Significantly Improved Technologies that fall within each of these technology categories.

- Category 1: Alternative Fuel Vehicles
- Category 2: Biomass
- Category 3: Efficient Electricity Transmission, Distribution and Storage
- Category 4: Energy Efficient Building Technologies and Applications
- Category 5: Geothermal
- Category 6: Hydrogen and Fuel Cell Technologies
- Category 7: Energy Efficiency Projects
- Category 8: Solar
- Category 9: Wind and Hydropower

Please note that the technology categories for 1705 Eligible Projects are limited to Renewable Energy Systems Projects, Electric Power Transmission Systems Projects and Leading Edge Biofuels Projects. Accordingly, Eligible Projects under Categories 1, 4, 6 and 7 above generally do **not** constitute 1705 Eligible Projects for which the Credit Subsidy Costs may be paid for out of funds appropriated under the Recovery Act to pay for the costs of loan guarantee issued under the Section 1705 Program.

H. Project Types

DOE is actively promoting projects that fall within the following two general but distinct project types:

- (1) manufacturing projects and
- (2) stand-alone projects.

1) Manufacturing Projects

This project type category envisions facilities that utilize New or Significantly Improved Technologies in manufacturing which meet the minimum criteria and eligibility set forth in Title XVII, the Final Regulations, the Solicitation, and, if a 1705 Eligible Project, the Recovery Act, and which, in each case, results in long-term reductions in manufacturing and product costs, higher factory

throughput and improved product performance compared to the manufacturing technologies in place at the time the Term Sheet is issued.

In this project type, the manufactured product or manufacturing technology employed must represent a New or Significantly Improved Technology.

2) Stand-alone Projects

This project type category is focused on renewable energy projects that produce energy from renewable resources, produce fuels from renewable sources, utilize energy efficiency technologies, build advanced efficient electricity transmission and distribution systems, build advanced efficient renewable fuel delivery systems, build energy storage projects, or deploy energy efficient building technologies within a single project.

III. Overview of Application Process

A. Objectives

This Solicitation requires applicants to submit timely information in sufficient detail to support a thorough analysis of the project's compliance with the objectives and requirements established by Title XVII, applicable portions of the Recovery Act, the Final Regulations and this Solicitation, as well as the rigorous underwriting criteria appropriate for projects of this scale.

Applicants must satisfy the "Finance Considerations for Applications" set forth above, including demonstrating that there is a reasonable prospect of repaying the principal and interest on the guaranteed portion of the Guaranteed Obligation and other project debt which will be incurred.

B. General Schedule

The application is divided into two parts, namely a Part I and a more detailed Part II.

The Part I submission is expected to provide DOE with a summary level description of the project, project eligibility, financing strategy and progression to date in critical path schedules.

The Part II submission consists of the items that were not due in the Part I submission, as well as other requested items of information expected to facilitate DOE's due diligence review.

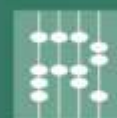
A complete Part I submission must be received by the DOE not later than 11:59pm Eastern Time ("ET") on any of the due dates for the rounds of review for Part I submissions as set forth below.

Payment for the initial 25% application fee must be paid contemporaneously with the applicant's Part I submission.

None of the application fee is refundable.

Subject to the availability of loan guarantee authority, and as set forth below, there will be seven (7) rounds of reviews for Parts I and II submissions.

All Part II submissions filed with DOE during any such round of review shall be competitively evaluated against all such filings submitted during that round, subject to DOE's right to defer, in its sole discretion, consideration of an application submitted in such round to a subsequent round of review because the application is incomplete.



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The Part II information may be filed at any time (subject to the Part II submission due dates set forth below) after DOE's notification to the applicant that its Part I submission is complete and that the project has been determined to be an Eligible Project and, if applicable, a 1705 Eligible Project under this Solicitation.

Accordingly, Part II submissions may be filed no later than 11:59pm Eastern Time ("ET") on any of the due dates set forth below for rounds of Part II submissions but in no event later than 11:59pm ET on December 31, 2010, the due date for the final round of Part II submissions.

The remaining 75% of the application fee must be paid contemporaneously with the applicant's filing of its Part II submission.

None of the application fee is refundable.

C. Multiple Applications

A Project Sponsor may only submit one application for one project employing a particular technology. In other words, consistent with Section 609.3(a) of the Final Regulations, a Project Sponsor may not submit an application for multiple projects using the same technology.

However, a Project Sponsor may submit a separate application for each different technology or different project type (i.e., manufacturing, stand alone) it wishes to submit to DOE for consideration.

D. Competitive Review Process

In order to encourage submissions of substantially complete applications as early as possible after the date of this Solicitation, Part I and Part II submissions will be systematically reviewed on a continuous basis as soon as they are received.

Applicants applying in earlier rounds of reviews will enjoy a first mover's advantage in terms of order of priority of review.

Complete applications must contain the information items listed in Section 609.6 of the Final Regulations.

DOE will competitively evaluate against each other all Part II submissions filed with DOE during any given round of review as specified below.

However, DOE reserves the right to include any incomplete Part II submission received during one round of Part II submissions in the competitive evaluation of applications received during a subsequent round of Part II submissions, affording the applicant the time to complete its Part II submission.

As more fully described below, selection of projects for due diligence review will be made after the closing of each round of Part II review.

E. Self-Selection

DOE's assessments of the Part I applications will provide applicants information to assist in their making a self-selection decision as to whether to proceed with the cost and effort of completing a full application, including Part II.

The overall objective of this process is to identify and accelerate the review of strong projects and, in the case of 1705 Eligible Projects, strong projects with substantial progress or likelihood to commence construction by September 30, 2011, which is, in each case, well documented in the Part I submission.

The Part II submission may be filed at any time (subject to the Part II submission due dates set forth below) after DOE's notification to the applicant that its Part I submission is complete and that the project has been determined to be an Eligible Project and, if applicable, a 1705 Eligible Project under this Solicitation.

If an applicant decides to proceed with a Part II submission, the applicant must update the information provided in its Part I submission and make a substantially complete Part II submission not later than 11:59pm ET on any of the due dates set forth below for rounds of Part II reviews but in no event later than 11:59pm ET on December 31, 2010, the due date for the final round of Part II submissions.

F. Part I and Part II Submission Schedule

Complete Part I and Part II submissions must be received by DOE no later than 11:59 PM Eastern Time ("ET") based on the schedule outlined below.

Each corresponding Part I and Part II submission due date shall be considered a round.

The following table summarizes the application schedule for Part I and Part II submissions.

Any Part II submission must update the Part I submission, as appropriate.

Table 1: Part I and Part II Submission Due Dates

| Round | Part I Submission Due | Part II Submission Due |
|--------------|------------------------------|-------------------------------|
| 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 |

In the event any of the above due dates fall on a Saturday, Sunday or federal holiday, then such due date shall be deemed to be the next following business day.

Applicants are advised to make proper arrangements to assure that Treasury receives applicable fees with corresponding submissions by the dates specified above.

G. Initial Selection to Begin Due Diligence, Underwriting and Negotiation

DOE will evaluate substantially completed applications, including each of the Part I and Part II submissions, based upon the factors summarized below and will make decisions as to whether to begin due diligence on projects competitively evaluated during a given round of Part II review after the closing of such round.

At any time following the due date for any particular round of Part II submissions, DOE may approve, for purposes of proceeding to due diligence, underwriting and negotiation, the selection of applicants meeting the objectives of Title XVII and, if a 1705 Eligible Project, of the Recovery Act, as well as the underwriting criteria for this Solicitation.

DOE shall endeavor, but is not required, to review the Part II submissions filed during a given round and make a recommendation for or against selection for due diligence review within two months from the closing date of such round of review.

Each applicant selected for due diligence will receive written notice from DOE of its intent to proceed with due diligence and underwriting with respect to such applicant's project.

H. Communications

DOE may require that each written submission be followed with an oral presentation by the applicant (e.g., by teleconference or face-to-face meeting) to discuss and clarify the submission and agree on next steps. Moreover, DOE may request additional information to clarify information submitted by applicants. Such requests by DOE for additional information, documentation, or briefings do not signify that a project has been approved for a loan guarantee.

I. Non-Selection and Future Consideration

Pursuant to Section 609.7(d) of the Final Regulations, applicants with whom DOE decides not to proceed with further negotiations, based on a Part I and/or Part II submission, will be informed in writing of the reason for DOE's decision not to proceed with the application.

Such determination by DOE shall be final and non-appealable, with respect to any given round of review, but will not prejudice the applicant from applying under a future solicitation under which it is eligible to apply or resubmitting new and updated Parts I and II, and paying an application fee in respect of such resubmissions, if the submission due dates have not expired under this Solicitation.

IV. Application Review Process and Review Criteria

A. Part I Submission Evaluation

Upon receipt of a Part I application, DOE will conduct a review of the application for purposes of

- (i) ascertaining its responsiveness with respect to the Threshold Determinations set forth in Section II above and completeness of information supplied,
- (ii) assessing technical readiness for near-term commercial application,
- (iii) determining whether the proposed technology is deemed to constitute a New or Significantly Improved Technology that avoids, reduces or sequesters anthropogenic emissions of greenhouse gases or air pollutants.

In addition to the Threshold Determinations, Part I submissions will be preliminarily reviewed based on the mandatory factors outlined below and will require continued validation during the applicable Part II review and during any due diligence phase:

- a. The project must employ New or Significantly Improved Technologies, as compared to Commercial Technologies in service in the U.S. at the time the Term Sheet is issued.
- b. The project must, at a minimum, employ in the United States at the time the Term Sheet is issued a New or Significantly Improved Technology that avoids, reduces or sequesters anthropogenic emissions of greenhouse gases or air pollutants.
- c. Solely with respect to projects for which applicants seek to qualify as a 1705 Eligible Project, the applicant shall have provided evidence sufficient to demonstrate that application for all permits, licenses and approvals necessary to enable the project to commence construction by September 30, 2011 have been, or will timely be, submitted to appropriate federal, state and local authorities.
- d. The project site is identified.

B. Part II Submission Evaluation

Upon receipt by DOE of a Part II submission after DOE notifies the applicant regarding its Part I submission, DOE will conduct an evaluation of the Part I submissions, together with substantially complete Part II submissions, based on the evaluation criteria, in accordance with their respective weightings, in each case, set forth below.

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.

At any time following the due date for any particular round of Part II submissions, DOE may approve for purposes of proceeding to due diligence, underwriting and negotiations, the selection of applicants meeting the requirements of Title XVII and, if a 1705 Eligible Project, the requirements of the Recovery Act, as well as the underwriting criteria for this Solicitation.

During this period of review, communications from the applicant to DOE are generally not permitted with respect to an application, except in instances when the applicant is required to respond to DOE's written notification to such applicant.

A mandatory criterion which DOE will use during each round of Part II reviews in determining which Project Sponsors/applicants will proceed to the negotiation stage is whether the project provides a reasonable prospect of repayment of the principal and interest by the applicant on the guaranteed portion of the Guaranteed Obligation and other project debt, which, when combined with amounts available to the applicant from other sources, will be sufficient to carry out the project.

If this mandatory requirement is not validated in any given round of Part II reviews, such application will not receive further consideration. Consistent with the factors in the Final Regulations, DOE shall consider the following factors in determining to make guarantees to proposed projects under this Solicitation:

Specific Weighting Criteria

Specific weighting criteria, as noted in Table 2 below, will be applied during the Part II review of any project.

Table 2: Review Criteria

a. Technical Review Criteria

Technical Relevance and Merit

DOE will consider the extent to which the project will

- (i) employ New or Significantly Improved Technologies as compared to Commercial Technologies in service in the U.S. at the time the Term Sheet is issued,
- (ii) consistent with Section 609.7(b)(3) of the Final Regulations, employ a New or Significantly Improved Technology that constitutes an important improvement in technology, as compared to Commercial Technologies in service in the U.S. at the time the Term Sheet is issued and as compared to technologies proposed in other applications submitted in response to this Solicitation and
- (iii) advance other Title XVII objectives.

Applicant Capabilities, Technical Approach and Work Plan

DOE will evaluate the clarity and technical strength of the approach to achieve the project's objectives, including, but not limited to,

- (1) the potential for replicability of commercial use of the technology in the United States,
- (2) the potential for future long-lasting commercial success of the project and the technology,
- (3) technical readiness for near-term commercial application,
- (4) risk and mitigation plan(s) associated with bringing the technology to fruition,
- (5) timeframe required to achieve results contemplated in the application, and
- (6) solely with respect to projects proposed as 1705 Eligible Projects, the project's ability to commence construction on or before September 30, 2011 based on factors, including:

- the extent to which all required contractors have been engaged,
- the readiness for delivery of major components and equipment,
- the extent to which all pre-construction design and prototype testing has been completed,
- the extent to which definitive interconnection agreements (if applicable) have been finalized and executed,
- the creditworthiness of the buyer under any transmission service agreement, if applicable, or other off-take agreement, the likelihood and nature of rate base treatment, if applicable, and the extent to which all necessary land rights and state and local permits, as well as the environmental clearances necessary to proceed, have been obtained or approved.

Note that DOE may require additional information to clarify, supplement or explain these descriptions.

In addition, this review will evaluate the project's construction plan, overall construction risk associated with the contingencies for equipment supply, selected prime mover equipment, order of operations, mobilization schedules, delivery timelines, performance milestones, equipment integration scale-up challenges, acceptance/commissioning factors and other relevant considerations.

Environmental Benefits

DOE will evaluate to what measurable extent the project avoids, reduces or sequesters air pollutants and/or anthropogenic emissions of greenhouse gases, as well as the life-cycle and sustainability of the primary technology and project facility.

Additional Technical Policy Criteria

DOE will also consider technological diversity as a non-weighted technical criterion. More specifically, DOE will consider whether the project provides for portfolio diversity, as well as contributes to a balance across differing technical areas.

Those Eligible Projects that support the generation of power from renewable energy sources will receive special consideration.

b. Financial Review Criteria

Creditworthiness of the Project

DOE must consider the proposed project's capacity to provide a reasonable prospect of repayment (e.g., economic viability, cash flow sufficiency to service the debt obligations over the life of the loan guarantee, etc.) of the principal and interest of the guaranteed portion of the Guaranteed Obligation and other project debt, which, when combined with amounts available to the applicant from other sources, will be sufficient to carry out the project.

DOE will consider Project Sponsor experience and financial capability, the scope and timing of equity commitments, the Project Sponsor's ability to pay in full transaction costs arising out of the project (e.g., fees and expenses for DOE's independent consultants and outside counsel as they are presented for payment on a periodic basis as discussed in Section IV.C of this Solicitation) on a timely basis, and credibility of the business and financial plans, as well as overriding market factors that could significantly influence the success of the project.

Construction Factors

DOE will evaluate the project's construction cost, financial integrity of the general contractor (and any related liquidated damages and guarantees), as well as any cost overrun reserve facilities.

In evaluating the risk of cost overruns in any given project, DOE will be required to undertake an analysis of, among other things, whether the guaranteed portion of the Guaranteed Obligation, together with amounts available to the applicant from other sources, will be sufficient to carry out the project.

In addition, DOE will evaluate the technology's component manufacturers.

Legal and Regulatory Issues

DOE will evaluate the project's capacity to mitigate risk from potential legal and regulatory issues that could jeopardize the success of the project.

Areas of review will include intervener, permitting and public acceptance risks.

Additional Financial Policy Criterion

DOE will also consider, each as a non-weighted financial criterion, the best use of the loan guarantee (e.g., demonstrates the most efficient and competitive uses of the loan guarantee) and the extent to which private financing on standard commercial terms is available to the project.

c. Additional Review Factors

Other than the mandatory criteria, none of the above list of evaluation factors are considered mandatory requirements but are rather evaluated as factors.

DOE's intention is to fund through this Solicitation the combination of projects that together best meets the criteria in Title XVII, Section 609.7 of the Final Regulations, and in the case of 1705 Eligible Projects, the Recovery Act.

Proposed projects eliminated by any of the Threshold Determinations in Section 609.7(a) of the Final Regulations and Section II above will not receive any further consideration.

d. Review Factors for Electric Power Transmission System Projects Only

Consistent with the objectives and terms of the Recovery Act, including Section 1705(b) of Title XVII, DOE shall consider the following factors in determining to make guarantees to 1705 Eligible Projects that are Electric Power Transmission System Projects:

- (a) The viability of the project without guarantees (whether from DOE or otherwise)
- (b) The availability of other Federal and State incentives (e.g., incentives other than the DOE loan guarantee)
- (c) The importance of the project in meeting reliability needs (e.g., the reliability needs of the national or local electric grid)

- (d) The effect of the project in meeting the environment (including climate change) and energy goals of the nation, a State or region of the United States (e.g., such goals of the State and/or region in which the project is located)

None of the above list of evaluation factors is considered a mandatory requirement but is rather evaluated as a factor in any 1705 Eligible Project, along with the other criteria described above in this Solicitation and as set forth in Section 609.7(b) of the Final Regulations.

C. Independent Consultants and Outside Counsel to DOE:

DOE expects to use independent consultants and financial and technical DOE staff in the review of Part I and Part II submissions to determine which projects will be selected for due diligence.

DOE's independent consultants and outside counsel shall submit to the responsible Project Sponsor or Borrower periodic invoices for services rendered to DOE with respect to applicant's project. Prior to submission of any invoice to a responsible Project Sponsor or Borrower, the independent consultant or outside counsel shall have submitted the invoice to DOE for purposes of determining the reasonableness of the fees and expenses so invoiced and for redacting any privileged attorney-client information.

Responsible Project Sponsors and Borrowers shall acknowledge and make payment for all fees and expenses represented by such invoices upon their periodic presentation thereof, including prior to or at closing (if any).

Each applicant, Borrower and its responsible Project Sponsor must specifically disclaim any inference of confidential, fiduciary or other client relationship (including an attorney-client relationship) between such applicant, Borrower or its responsible Project Sponsor and such independent consultant or outside counsel as a result of this arrangement and shall not interfere with DOE's relationship (including any attorney-client relationship) with such independent consultants or outside counsel, including DOE's ability to terminate.

V. Post-Selection: Project Due Diligence, Underwriting and Negotiations

The project due diligence, underwriting and negotiation phase of the loan guarantee process will involve DOE's detailed examination of the project, including reviews of the applicant's technical information, business and financial plans, and proposed organizational structure and staffing. DOE's due diligence will be conducted during this phase but cannot conclude until all application materials have been received in final form and have been properly evaluated.

To the extent aspects of the project have changed from the information provided in the Part I and Part II submissions, DOE's analysis and conclusions regarding the project may change.

Likewise, if a material change occurs following Credit Review Board ("CRB") approval of a Term Sheet (as discussed below), the applicant must submit to DOE updated project information reflecting the modifications, which may in turn require resubmission to, and reconsideration by, the CRB.

As such, to the greatest extent possible, applicants should endeavor to capture all material information in the initial submission of any required item in support of its application in order to avoid slowing down the decision-making process due to the need to resubmit updated material information.

As part of its comprehensive project underwriting process, DOE will undertake the following steps:

A. Evaluate Financing Plan

1. This involves a thorough review of the sources and uses of funds as proposed by the applicant. Aspects of the review will involve but is not be limited to:

- _ Analysis of the adequacy, leverage and timing of the proposed sources of funding (with equity funded either in advance of, or concurrently with, debt during the construction period);
- _ Review of the terms and rights of the various funding sources and degree of commitment;
- _ Determination of compliance with requirements of Title XVII, the Final Regulations, this Solicitation and, with respect to 1705 Eligible Projects, of the Recovery Act; and
- _ Assessment of the adequacy of proposed contingency and reserve funding.

B. Assess Financial Viability

Based on the financing plans submitted with the application and updates, and projections for future financial performance, DOE will assess the financial viability of the project with specific emphasis on the borrower's expected ability to repay the guaranteed portion of the Guaranteed Obligation and other project debt. In accordance with the Final Regulations, for projects where the estimated total Project Costs exceeds \$25 million, the applicant must provide a preliminary credit assessment for the project, if the project is proposed as a project finance structure, or the borrower's most recent corporate credit rating if the project is proposed as a corporate finance structure, in each case, without giving effect to the DOE loan guarantee, and from a nationally recognized rating agency.

The preliminary assessment or the corporate credit rating shall examine, as applicable, the project as structured, or the borrower, but, in each case, in the absence of a loan guarantee from DOE, and shall identify any material assumptions utilized by the rating agency in its analysis.

For projects where the estimated total Project Costs is \$25 million or less, in the sole discretion of the Department, DOE may require such an assessment or corporate credit rating as well.

C. Determine Technical Efficacy

This evaluation will commence with a thorough review of the applicant's engineering report, including consideration of factors such as environmental impact, infrastructure requirements and, if an Electric Power Transmission Project, environmental (including climate change) and energy goals.

DOE may utilize its internal technical resources as well as independent third-party advice in reviewing the project's technical efficacy.

Determination of the technical merit of the project will be influenced by the quality of the applicant's engineering report, including the professional credentials of the consultant, scope of the undertaking, and strength of the opinions provided.

D. Review Project Legal Structure

As part of its due diligence work, DOE will review the project's legal structure.

This will involve analysis of draft and final legal agreements among project participants, including equity owners, financing sources, engineering and construction contractors, operation and maintenance contractors, equipment suppliers, host communities, and any other counter-parties of interest.

Additionally, a legal review will include an analysis of the intellectual property rights of participants in the project to ensure that the project can use all of the proposed technology to be employed in the project.

E. Evaluate Project Risks

As part of its review, DOE will identify, assess and estimate the impact of risks associated with the project. Based on the outcome of the technical, financial and legal reviews, the analysis will determine the types and magnitude of the risks associated with the project, proper risk allocation among the parties, and the extent to which risks have been mitigated.

F. Perform Financial Model Review and Stress-Testing

Modeling is a critical tool in assessing the project's expected financial performance and ability to service debt.

DOE will verify the applicant's calculations, which, if the applicant is seeking to qualify its project as a 1705 Eligible Project, must, pursuant to Section 1705(c) of Title XVII, take into account the cost of complying with the Davis Bacon Act and all applicable Davis Bacon Act regulations pursuant to Section 1705(c) of Title XVII and must, if applicable, also take into account the Buy American provision under Section 1605 of the Recovery Act.

Applicants in submitting their Part I and Part II submissions should not presume their projects constitute 1705 Eligible Projects but should prepare their business plans, and financial models, using, on the one hand, the presumption that the Credit Subsidy Cost will be paid by the applicant or the Project Sponsor and, on the other hand, that Recovery Act funds will cover the Credit Subsidy Cost in which case their financial model and business plans should take into account the cost of compliance with the Davis Bacon requirements of Section 1705(c) of Title XVII and, if applicable, the Buy American provision under Section 1605 of the Recovery Act.

The modeling must quantify the impacts of risks by stress-testing the model to understand how changes in model assumptions can affect the project's capacity to make full and timely repayments of the loan. This will be accomplished through the utilization of the corporate or project financial model submitted as part of the application and through a financial model developed by DOE.

G. Assess Strengths and Weakness of Project Sponsors

This step of the process will examine the Project Sponsors' investment to date and capability to implement the project as proposed from both financial and managerial perspectives.

Specific considerations include, but are not limited to:

- _ The Project Sponsors' track record in project development and in the specific technology proposed in the application;
- _ The Project Sponsors' financial strength and resources;
- _ The strategic value of the project to the Project Sponsors; and
- _ The experience and expertise of the management team, particularly as it relates to operation of the proposed project.

H. Analyze Proposed Collateral

Title XVII requires that, with respect to any property acquired pursuant to a guarantee or related agreements, the rights of the Secretary shall be superior to the rights of any other person with respect to the property.

The value of the collateral will be examined in detail, particularly under default scenarios.

This evaluation will be based on, among other things, the nature of the collateral pledged, appraiser reports submitted by the applicant, and expected cash availability under a default scenario. Eligible Lenders or other Holders, other than the Federal Financing Bank, may, during this analysis, initiate discussions with DOE on a plan of liquidation of the assets expected to be pledged to secure the Guaranteed Obligation.

Any agreement by DOE with respect to sharing the proceeds following any liquidation shall be documented in a written agreement among DOE, the Borrower and such other collateral holders and shall be subject to the approval of the Secretary at or prior to the closing.

I. Analyze Environmental Impact

The applicant must provide enough information to enable DOE to determine the level of NEPA review that would be required if the applicant were selected to begin negotiations with DOE.

In cases where an Environmental Impact Statement (“EIS”) is required, with respect to an application, DOE will prepare an EIS, or, as appropriate, adopt an EIS prepared by other federal agencies for the corresponding project and issue a record of decision (“ROD”) stating what the decision is and identifying alternatives considered.

The ROD will also state whether all practicable means to avoid or minimize environmental harm from the alternative selected have been adopted.

J. Issuance of Term Sheet

Upon the execution of a Term Sheet the applicant must pay to DOE twenty percent (20%) of the non-refundable facility fee (or Second Fee) for its application to be considered further.

(The balance, or eighty percent (80%), of the facility fee (Second Fee) will be due and payable at the closing of the Loan Guarantee Agreement).

If a project recommended by the CRB for approval subsequently undergoes a material change, a revised CRB review package will have to be re-submitted to the CRB for review and decision.

Pursuant to Section 609.7(d) of the Final Regulations, applicants with whom DOE decides not to proceed further with the issuance of a Term Sheet will be informed in writing of the reason for DOE’s decision not to proceed with the application.

Such determination by DOE shall be final and non-appealable but will not prejudice the applicant in any future solicitation under which it is eligible to apply or resubmitting new and updated Parts I and II, and paying an application fee in respect of such resubmissions, if the submission due dates have not expired under this Solicitation.

K. Conditional Commitment

In accordance with Section 609.8 of the Final Regulations, a Conditional Commitment, if entered into by an applicant and DOE, will be conditionally binding and will include, among others, the following terms:

- Material change qualifiers;
- A series of conditions precedent to the closing of the loan guarantee transaction;
- Expiration dates; and
- Termination provisions for failure to pay fees according to DOE’s schedule.

The Secretary may terminate a Conditional Commitment for any reason at any time prior to the closing of a Loan Guarantee Agreement, as described in Section 609.2 of the Final Regulations.

The Secretary may not delegate the authority to terminate a Conditional Commitment.

VI. Closing

With respect to 1705 Eligible Projects, DOE will pay, subject to the availability of funds, the Credit Subsidy Cost for a loan guarantee issued under Section 1705 for a 1705 Eligible Project under this Solicitation provided that the project satisfies all of the applicable requirements of Title XVII, including Section 1705, and of the Recovery Act, the Final Regulations and this Solicitation, and the applicant shall pay the non-refundable maintenance fee (or Third Fee).

The general closing process and requirements are described in the Final Regulations.

Without limitation, the applicant will be required to deliver to DOE no later than 30 days prior to the closing a final credit rating for the project, if project financed, or, if corporate financed, a letter confirming that the most recent corporate credit rating of the Project Sponsor has been reconfirmed or, as appropriate, updated, in each case, from a nationally recognized credit rating agency, without giving effect to the DOE loan guarantee. DOE will consider this information in its final calculation of the Credit Subsidy Cost.

VII. Fees, Credit Subsidy Cost Payment and Extraordinary Costs

A. Fees

Section 1702(h) of Title XVII requires DOE to “charge and collect fees ... sufficient to cover applicable administrative expenses” of the loan guarantee program but affords DOE discretion with respect to how to impose such fees.

The Final Regulations specify the stages of the loan guarantee process at which applicants must pay to DOE Administrative Costs of Issuing a Loan Guarantee.

Section 609.10(c) of the Final Regulations also provide that “no funds obtained from the Federal Government, or from a loan or other instrument guaranteed by the Federal Government, may be used to pay ... administrative fees, or other fees charged by or paid to DOE relating to the Title XVII program or any loan guarantee there under.”

A fee schedule for this is presented in Attachment C of the solicitation.

These fees are nonrefundable and will be due in full as specified below:

– **Application Fee:** A portion (25%) of the application fee must be submitted with the application at the time of the Part I submission. The remainder (75%) of the application fee must be submitted with the application at the time of the Part II submission. This fee recovers costs associated with DOE’s administrative costs incurred in connection with the pre-selection evaluation of an application.

– **Facility Fee:** The facility fee (or Second Fee) is due as follows: (i) 20% of the Facility Fee is due upon the execution by the applicant of the Term Sheet approved by the CRB and (ii) 80% of the facility fee is due upon the closing date of the Loan Guarantee Agreement.

– **Maintenance Fee:** The maintenance fee (or Third Fee) is payable to cover DOE’s administrative expenses in servicing and monitoring the Loan Guarantee Agreement during the construction, startup, commissioning and operational phases of a project. The amount of such fee is expected to be in the range of \$50,000 to \$100,000 per year and shall be either (i) payable each year in advance, commencing upon the closing date of the Loan Guarantee Agreement, in the amount specified in the Loan Guarantee Agreement, or (ii) if provided for in the Loan Guarantee Agreement, payable as an one-time fee at the closing in a lump sum amount equal to the aggregate sum of such annual fees specified in the Loan Guarantee Agreement for the entire term of the loan guarantee, discounted to net present value.

B. Loan Guarantee Credit Subsidy Cost

Other than with respect to 1705 Eligible Projects, DOE anticipates that the project(s) approved pursuant to this Solicitation will require the Project Sponsor or applicant to pay the non-refundable Credit Subsidy Cost directly and in full at or before the closing. DOE will deposit into the Treasury such payment received.

Subject to the availability of funds, the Credit Subsidy Cost for a 1705 Eligible Project may be covered by funds made available under the Recovery Act if such project satisfies all of the requirements of Title XVII, including Sections 1703 and 1705, of this Solicitation and of the Final Regulations, as well as all applicable requirements of the Recovery Act.

C. Extraordinary Costs and Expenses

In accordance with Section 1702(h) of Title XVII, the Loan Guarantee Agreement shall also provide that in the event that a project experiences technical, financial, legal or other events which require DOE to incur time or expenses beyond standard monitoring (e.g., engineering failure or financial workouts), the Borrower shall be liable in full for the payment of such additional internal administrative costs and of related fees and expenses of independent consultants and outside counsels.

VIII. Application Submission Requirements

A. Electronic Format of Applications

Applicants must submit their applications, including a completed DOE application form – OMB No. 1910-5134, electronically using FedConnect. Instructions on how to register in FedConnect, submit an application, and other related topics may be found at: www.fedconnect.net. The applicant must also submit two hard copies of their application along with a completed DOE application form – OMB No. 1910-5134.

Twenty-five percent (25%) of the application fee must be submitted at the time of the Part I submission and wired to Treasury.

Applicants must submit their applications in accordance with the instructions.

Information regarding how to submit via FedConnect may be found at www.fedconnect.net. Further, it is the responsibility of the applicant, prior to the due date and time, to verify successful transmission.

While the Part I and Part II submissions through FedConnect shall serve as the official version sent to DOE, applicants are also required to send their Part I and Part II submissions on a compact disc or USB stick to the Loan Guarantee Program Office (“LGPO”) at the address listed in Attachment G, Section 2 of the solicitation, which should arrive by express mail at DOE no later than two (2) business days after the applicable due date by which applicant filed its Part I and Part II submissions by FedConnect.

B. Registrations

In submitting applications through FedConnect, applicants must complete the following: _ Obtain a Dun and Bradstreet Data Universal Numbering System (“DUNS”) number, _ Obtain a North American Industry Classification (“NAIC”) number, _ Register with the Central Contract Registration (“CCR”), and _ Register with FedConnect.

Applicants are highly encouraged to allow at least 21 days to complete the steps above.

C. Detailed Preparation Instructions

Documents supporting and forming a part of applications must be typed, single-spaced, and must adhere to a format consisting of standard 8.5” x 11” paper with 1” margins (top, bottom, left and right) with font not

smaller than Times New Roman 11 point, with exceptions for charts, graphics and similar material. Official applications and supporting documentation must be submitted electronically through the FedConnect site at www.fedconnect.net.

D. Changes

Notwithstanding the requirement for the applicant to submit comprehensive information to complete an application, DOE recognizes that certain elements of the project's development may not be fully developed until a later time.

Regardless, the information submitted should include the applicant's best estimate of the timing of completion of these outstanding items, recognizing that final terms and conditions cannot be presented to the CRB until all project elements have been finalized and DOE has completed its underwriting and due diligence review.

Additional Information

A. Government Right to Reject or Negotiate

DOE reserves the right, without qualification, to reject any or all applications received in response to this Solicitation and to select any application, in whole or in part, as a basis for negotiation.

B. Commitment of Public Funds

DOE shall not be bound by oral representations made during the pre-application stage, application stage or during any negotiations.

No binding commitment, agreement, obligation, or right of any kind may be assumed or enforced by any applicant against DOE other than in accordance with an executed Loan Guarantee Agreement, as executed by the appropriate DOE authorizing official.

C. Restrictions on Disclosure and Use of Information

Title XVII authorizes the collection of this information.

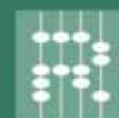
The primary use of this information is by DOE in its review of applications for loan guarantees under Title XVII.

All information collected will be handled in accordance with the Freedom of Information Act (5 U.S.C. 552) and all applicable laws.

Patentable ideas, trade secrets, proprietary, or confidential commercial or financial information, disclosure of which may harm the applicant, should be included in an application only when such information is necessary to convey an understanding of the proposed project. The use and disclosure of such data may be restricted, provided the applicant specifically identifies and marks such data in accordance with the following provisions:

1.) Applicant discloses in the DOE application form that (be sure to specify the application Sections containing proprietary data in the legend as it appears in the DOE application form):

"Sections ___ of this Application contain data which have been submitted in confidence and contain trade secrets or proprietary information, and such data shall be used or disclosed only for evaluation purposes; provided that, if this applicant is issued a loan guarantee under Title XVII of the Energy Policy Act of 2005 as a result of or in connection with the submission of this Application, DOE shall have the right to use or disclose the data herein, other than such data that have been properly reasserted as being trade secret or proprietary in the loan guarantee



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agreement. This restriction does not limit the Government's right to use or disclose data obtained without restriction from any source, including the applicant."

2.) Applicant includes the following legend on the first or cover page of each document or electronic file submitted as part of the application that contains such data (be sure to specify the page numbers from such document or electronic file that contains the proprietary data):

"The data contained in pages _____ of this document or electronic file which hereby forms a part of the Application have been submitted in confidence and contain trade secrets or proprietary information, and such data shall be used or disclosed only for evaluation purposes; provided that, if this applicant is issued a loan guarantee under Title XVII of the Energy Policy Act of 2005 as a result of or in connection with the submission of this Application, DOE shall have the right to use or disclose the data herein, other than such data that have been properly reasserted as being trade secret or proprietary in the loan guarantee agreement. This restriction does not limit the Government's right to use or disclose data obtained without restriction from any source, including the applicant."

3.) Applicant includes the following legend on each page of a document or electronic file containing such data (a) as a header on the page or (b) to specifically identify and mark each line or paragraph on the page containing such data:

"The following contains proprietary information that (name of applicant) requests not be released to persons outside the Government, except for purposes of review and evaluation."

-End of Redacted Summary-

Please see official guidance (85 pages) in its entirety before apply or proceeding with an application, or contact your Reznick professional with questions.