

Government Support for Energy Efficiency

The Dept. of Energy, under its Innovative Technology Loan Guarantee Program, released a solicitation announcement that provides support for projects employing innovative energy efficiency, renewable energy and advanced transmission and distribution technologies. The Innovative Technology Loan Guarantee Program was established under Title XVII of the Energy Policy Act of 2005 to facilitate commercialization of new and improved renewable energy and energy efficiency technologies that are not considered commercial technologies (the "Section 1703 program"). The Innovative Technology Loan Guarantee Program was subsequently expanded under the American Recovery and Reinvestment Act of 2009 (the "Recovery Act program") to provide additional financing support for the rapid deployment of renewable energy, electric transmission and leading-edge biofuel

projects; projects supported under the Recovery Act must commence construction by Sept. 30, 2011.

The current solicitation addresses projects and technologies supported under both the original Section 1703 program and the expanded Recovery Act program. The Dept. of Energy seeks both manufacturing projects that result in long reductions in manufacturing and product costs and stand-alone renewable energy and electric power transmission projects. The Dept. of Energy has \$8.5 billion in loan guarantee authority under the current solicitation and will make available up to \$2.5 billion to pay the credit subsidy costs of loan guarantees qualifying under the Recovery Act program. The solicitation will remain open until the aggregate \$8.5 billion in loan guarantee authority is fully obligated; however, the program is competitive, and the Dept. of Energy urges early application for priority of review for a first mover's advantage.

Eligible technologies under the Recovery Act program are renewable energy systems, electric power transmission systems and leading-edge biofuels projects. Projects must be located in the United States, employ a new or significantly improved technology and be reasonably likely at the time of initial application to the Dept. of Energy to commence construction on or before Sept. 30, 2011.

The solicitation is specifically designed to support those projects that are most assured of commencing construction and having a loan guarantee issued no later than Sept. 30, 2011. The Dept. of Energy interprets this to mean that, before that date, the borrower has obtained necessary licenses, permits and local and national clearances; completed preconstruction design and prototype testing; engaged contractors; and ordered equipment and supplies so that physical construction may commence. In the event that a project is unable to commence construction by Sept. 30, 2011, or fails to meet a requirement set forth in the Recov-

ery Act, the project may be allowed to proceed under the Section 1703 program; the applicant, however, must pay the associated credit subsidy cost. Projects supported under the Recovery Act program are subject to additional requirements, including Davis-Bacon Act wage requirements, Recovery Act reporting requirements and Buy American provisions.

The Dept. of Energy is also soliciting projects under the original Section 1703 program; however, in contrast to its treatment of programs funded under Recovery Act criteria, the Dept. of Energy will not cover the credit subsidy costs for the Section 1703 loan guarantees. Eligibility under the Section 1703 program requires that projects be located in the United States and employ a new or significantly improved technology that is not a commercial technology. As defined in the applicable regulations, a commercial technology is a technology in general use in the commercial marketplace in the United States at the time a term sheet is issued by the Dept. of Energy.

The categories of technologies considered eligible for loan guarantees under the Section 1703 program is broader than those funded under the Recovery Act. Additional technologies include alternative fuel vehicles, energy efficiency technologies and applications, as well as hydrogen and fuel cells. Projects that are at the pilot stage or that have not completed a full-scale demonstration project are ineligible under the current solicitation.

The application process is divided into two parts. The first Part I deadline is Sept. 14, 2009; the second Part I deadline is Aug. 24, 2010. The second application phase has a Part I closing deadline of Aug. 24, 2010. While the first Part I deadline has passed, the Dept. of Energy expects to review applications as they are received; thus parties are encouraged to submit applications as soon as possible.

The Part I submission provides the Dept. of Energy with a summary-level description of the project, project eligibility, financing strategy and progression to-date with critical path schedules, including licensing and regulatory permits. The Part I submission must be prepared in accordance with the Energy Policy Act 2005, the Innovative Technology Loan Guarantee program regulations and, if applicable, the Recovery Act. Application fees vary by the total loan guarantee amount sought; 25 percent of that amount is due at the time of the Part I application.

The Part II submission provides the Dept. of Energy with more detailed information to facilitate an extensive diligence review. The remainder of the application fee is due at the time of the Part II submission. A key factor in Part II reviews is whether the project sponsors or applicants provide a reasonable prospect of repayment of the principal and interest of the guaranteed obligation and other project debt.

The Dept. of Energy expects that the information requested under the solicitation and the documentation produced as a result of negotiations will conform in scope, quality and detail with that typically requested in an arm's-length, commercially negotiated project or financing on the same scale. The Dept. of Energy expects to analyze projects on a limited recourse project financing basis and will not assume any pre-construction risks.

The application process is expected to be competitive. The Dept. of Energy estimates there will be seven rounds of review for Part I and Part II submissions and encourages applicants to submit information early. Additional fee payments are due upon the execution of the term sheet and at closing.

Daily Journal

Charles T. Munger
Chairman of the Board
J.P. Guerin
Vice Chairman of the Board

Gerald L. Salzman
Publisher / Editor-in-Chief
Robert E. Work
Publisher (1950-1986)

David Houston
Editor

Alexia Garamfalvi
San Francisco Editor

Sharon Liang
Legal Editor

Liz Enochs
Associate Editor
San Francisco

Pia Sarkar
Associate Editor
San Francisco

Christian Berthelsen
Associate Editor
Los Angeles

Sarah Garvey
Associate Editor
Los Angeles

Evelyn Larrubia
Associate Editor
Los Angeles

Aris Davoudian, Designer

Los Angeles Staff Writers

Pat Alston, Rebecca U. Cho, Gabe Friedman, Evan George, Sandra Hernandez, Catherine Ho, Greg Katz, Joanna Lin, Ciaran McEvoy, Susan McRae, Jean-Luc Renault

San Francisco Staff Writers

Rebecca Beyer, Laura Ernde, Dhryana Levey, Sara Randazzo, Jill Redhage, John Roemer, Fiona Smith, Amy Yarbrough

Bureau Staff Writers

Craig Anderson, San Jose; Jason W. Armstrong, Riverside, Matthew Pordum, Sacramento; Don J. DeBenedictis, Santa Ana, Pat Broderick, San Diego; Lawrence Hurley, Robert Iafolla, Washington D.C.

Robert Levins, S. Todd Rogers, Photographers
Lisa Kestenbaum, Editorial Assistant

Rulings Service

Seena Nikrahan, Rulings Editor
Kenneth Hsu, Verdicts and Settlements Editor
Meryl Chambers, Edward Chang Legal Writers

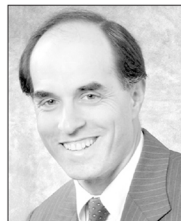
Advertising

Audrey L. Miller, Corporate Display Advertising Director
Monica Smith, Los Angeles Account Manager
Joel Hale, Michelle Kenyon, San Francisco Account Managers
Usman Baporla, Jesse Rios, Display Advertising Coordinators
Nikki Delucchi, San Francisco Administrative Coordinator

Art Department

Kathy Cullen, Art Director

The Daily Journal is a member of the Newspaper Association of America, California Newspaper Publishers Association, National Newspaper Association and Associated Press



RICHARD M. GITTLEMAN is a partner at Akin Gump Strauss Hauer & Feld LLP where he heads the Renewable Energy Initiative. He can be reached at rgittleman@AKINGUMP.com.



HANK A. TERHUNE is a partner at Akin Gump Strauss Hauer & Feld LLP and specializes in energy and environmental issues. He can be reached at hterhune@AKINGUMP.com.