

**LOAN GUARANTEE
SOLICITATION ANNOUNCEMENT**



**U.S. Department of Energy
Loan Guarantee Program Office**

**FEDERAL LOAN GUARANTEES FOR
ELECTRIC POWER TRANSMISSION INFRASTRUCTURE
INVESTMENT PROJECTS**

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*See Section IV.6 for multiple due dates regarding Part II submissions

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Full Announcement

Loan Guarantee Solicitation for Applications for Electric Power Transmission Infrastructure Investment Projects

I. Solicitation Description

A. Purpose of Solicitation

This solicitation announcement (“Solicitation”) invites the submission of applications for loan guarantees from the United States Department of Energy (“DOE” or the “Department”) under Section 1705 of Title XVII of the Energy Policy Act of 2005, 22 U.S.C. 16511-16514, as amended (“Title XVII”), in support of debt financing for Transmission Infrastructure Investment Projects (as defined in Section II.A below) located in the United States. Title XVII was amended by Section 406 of the American Recovery and Reinvestment Act of 2009, P.L. 111-5 (the “Recovery Act”), to create Section 1705 authorizing a new program for rapid deployment of renewable energy and electric power transmission projects (the “Section 1705 Program”). The primary purposes of the Recovery Act are job preservation and creation, infrastructure investment, energy efficiency and science, assistance to the unemployed, and State and local fiscal stabilization. The Section 1705 Program is designed to address the current economic conditions of the nation, in part, through renewable and transmission projects. The Recovery Act provides that approximately five billion nine hundred sixty five million dollars (\$5,965,000,000) in appropriated funds be made available until expended to pay the Credit Subsidy Costs (as defined below) of loan guarantees issued under Section 1705 of Title XVII for certain renewable energy systems, electric transmission systems and leading edge biofuels projects.

The Office of Management and Budget (OMB) has issued 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”). OMB will be issuing additional guidance concerning the Recovery Act. Applicants should consult the DOE website, www.energy.gov, the OMB website <http://www.whitehouse.gov/omb/>, and the Recovery website, www.recovery.gov regularly to keep abreast of guidance and information as it evolves. Applicants must comply with all applicable requirements of the Recovery Act, as shall be provided in any Loan Guarantee Agreement entered into between the applicant and DOE.

Section 1705 of Title XVII is authorized by the Recovery Act notwithstanding Section 1703 of Title XVII. Consistent with the mandate in Section 3(b) of the Recovery Act to spend funds made available thereunder and to commence activities, including the issuance of loan guarantees under Section 1705, “as quickly as possible consistent with prudent management,” DOE is implementing the Section 1705 Program through this Solicitation and subsequent solicitations. Attachment G to this Solicitation sets forth certain provisions applicable to this Solicitation and eligible projects under Section 1705 of Title XVII. All applicants are encouraged to review and become familiar with the requirements of Section 1705 of Title XVII and the provisions set forth in Attachment G, which, together with other requirements set forth herein, govern this Solicitation. Copies of these authorities can be found at <http://www.lgprogram.energy.gov/> (the “Program Website”). All capitalized terms defined

herein shall have the meanings ascribed to them in this Solicitation, and all capitalized terms used but not defined herein shall have the meanings ascribed to them in Attachment G. Neither a procurement action under Title 48 of the Code of Federal Regulations nor a financial assistance award under 10 CFR Part 600 is contemplated by this Solicitation.

Of the five billion nine hundred sixty five million dollars (\$5,965,000,000) made available under the Recovery Act, DOE will make available up to seven hundred fifty million dollars (\$750,000,000) under this Solicitation to pay the Credit Subsidy Costs of loan guarantees made for Transmission Infrastructure Investment Projects. Under Section 1705(e) of Title XVII, the authority to enter into guarantees under Section 1705 expires on September 30, 2011. It is possible that the full loan guarantee process will not be completed with respect to an application prior to the expiration of the authority under Section 1705 to enter into guarantees. This Solicitation is specifically designed to provide loan guarantees under Section 1705 of Title XVII to support those Transmission Infrastructure Investment 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) of Title XVII.

While this Solicitation is limited to Transmission Infrastructure Investment Projects, DOE anticipates issuing an additional solicitation in the future that will afford an opportunity for the submission of additional loan guarantee applications in support of electric power transmission systems projects.

B. Background of the Section 1705 Program

Section 1705 of Title XVII authorizes the Secretary of Energy (“Secretary”) to make loan guarantees under this section, notwithstanding Section 1703, for only three categories of projects that commence construction no later than September 30, 2011: (1) “renewable energy systems, including incremental hydropower, that generate electricity or thermal energy and facilities that manufacture related components,” (2) “electric power transmission projects, including upgrading and reconductoring projects,” and (3) “leading edge biofuel 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.” This Solicitation seeks loan guarantee applications solely with respect to Transmission Infrastructure Investment Projects (as defined in Section II below). Appropriated funds under the Recovery Act are not available under this Solicitation to cover the Credit Subsidy Costs of any project other than Transmission Infrastructure Investment Projects. Future DOE solicitations are expected to afford opportunities for the submission of additional loan guarantee applications in support of electric power transmission systems projects, as well as other eligible projects under Section 1705 of Title XVII.

Except for Section 1703, the Section 1705 Program is subject to all of the requirements of Title XVII, including Section 1702. Section 1702 of Title XVII expressly provides in subsection (a) that “[e]xcept for division C of Public Law 108-324, the Secretary shall make guarantees under this or *any other Act* [e.g., the Recovery Act] ... only in accordance with this section [1702].” (Emphasis added). Therefore, all of the requirements of Section 1702 apply to the Section 1705 Program. Specifically, Section 1702 requires that the obligation not be subordinate to other financing, the loan guarantees shall be based upon a determination that there is a reasonable prospect of repayment by the Borrower of the guaranteed portion of the Guaranteed

Obligation and other project debt and that such portion of the Guaranteed Obligation, together with amounts available to the Borrower from other sources, will be sufficient to carry out the project. In order to comply with the Section 1702(d)(1) reasonable prospect of repayment requirement, projects issued loan guarantees under Section 1705 may not be a research, development or demonstration project.

DOE has developed an application process that will involve a thorough analysis of the applicant's ability to repay the guaranteed portion of the Guaranteed Obligation, meet statutory and policy goals established by Title XVII (excluding Section 1703) and by the requirements set forth in Attachment G and satisfy DOE's loan underwriting criteria.

OMB has issued its Initial OMB Implementing Guidance and will be issuing additional guidance concerning the Recovery Act. Any Loan Guarantee Agreement entered into between an applicant and DOE will require compliance with all applicable provisions of the Recovery Act. Applicants should consult the DOE website, www.energy.gov, the OMB website <http://www.whitehouse.gov/omb/>, and the Recovery website, 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 of Title XVII must satisfy specific energy finance requirements as set forth in Attachment G, particularly Section 609.10(d)(3) through (10) and (13) thereof, which must be addressed by the applicant in responding to this Solicitation. For example, as required by Section 609.10(d)(3) of Attachment G, the face value of the debt guaranteed by DOE under Section 1705 of Title XVII is limited to no more than eighty percent (80%) of total Project Costs and, consistent with Sections 609.2 and 609.10(d)(5) of Attachment G, the Borrower and other principals involved in the project must have made or will make a significant Equity, defined by Attachment G as cash, investment in the project.

DOE expects that the information requested, 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 expects to analyze projects on a corporate financing basis (i.e., with full recourse to the Applicant/Project Sponsor's balance sheet) as well as on a limited recourse project financing basis. DOE will not assume pre-construction risks. Additionally, applications supporting loan guarantee structures outside of the two mentioned above that provide a reasonable prospect of repayment and meet other Title XVII objectives are also 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 Attachment G or below (collectively, the "Threshold Determinations"). In addition to Section 609.7(a) of Attachment G, an application will be denied if:

- (1) The project will not commence construction on or before September 30, 2011 (as defined in Section II.A below).

- (2) The project will not create or retain jobs in the United States. (See Attachment A1.D.4 to 5).

In addition, all of the eligibility requirements listed below must be met:

A. Eligible Projects: An eligible project under this Solicitation shall consist of a complex electric transmission systems project located in the United States (“Transmission Infrastructure Investment Project”) that (i) utilizes a Commercial Technology, (ii) is reasonably likely, at the time of the submission of the Part I application, to commence construction on or before September 30, 2011, (iii) meets all applicable requirements of Title XVII, including Section 1705, and of the Recovery Act, this Solicitation and Attachment G, (iv) cannot be financed from private sources on standard commercial terms, and (v) meets at least one of the following criteria set forth below (an “Eligible Project”):

1. The project involves new or upgraded lines of at least 100 miles of 500 kilovolts (kV) or higher or 150 miles of 345 kV.
2. The project has at least 30 miles of transmission cable under water.
3. The project has a high voltage direct current (DC) component.
4. The project is a major interregional connector.
5. The project is designated as a National Interest Electric Transmission Corridor by DOE under the Energy Policy Act of 2005, Pub. L. No. 109-58.
6. The project is associated with offshore generation, such as open ocean wave energy, ocean thermal, or offshore wind.
7. The project mitigates a substantial reliability risk for a major population center.
8. A set of improvements to an integrated system within a State or region that together aggregate to meet the criteria in Section II.A.1 above.

Projects that support the generation of power from renewable energy sources will receive special consideration. Electric power transmission systems projects that do not meet any of the criteria set forth in Section II.A.1-8 may be eligible to apply for a loan guarantee under separate future solicitations.

For purposes of this Solicitation, the term “commence construction on or before September 30, 2011” means, with respect to an Eligible Project under this Solicitation, 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. For any project to constitute an Eligible Project that commences construction 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. If a project fails to commence construction on or before September 30, 2011, DOE is not authorized to proceed with funding (if a 100% Guaranteed Obligation), or with entering into a Loan Guarantee Agreement in connection with, the project and must terminate any outstanding Loan Guarantee Agreement and/or Conditional Commitment, without any further obligation to the applicant.

To facilitate 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 on or before September 30, 2011, DOE may (i) terminate the Loan Guarantee Agreement or (ii) if a Loan Guarantee Agreement has not been entered into by September 30, 2011, withdraw any Conditional Commitment, in each case, without any further obligations to the applicant.

B. Eligible Applicants: An eligible applicant under this Solicitation includes any applicant meeting the definition of "Applicant" set forth in Section 609.2 of Attachment G and seeking a loan guarantee under Section 1705 of Title XVII for an Eligible Project under this Solicitation.

C. Eligible Lenders: An eligible lender under this Solicitation shall satisfy the meaning set forth under the term "Eligible Lender" in Section 609.2 of Attachment G and meet the requirements set forth in Section 609.11 of Attachment G.

D. Project Costs: Project costs under this Solicitation shall have the meaning ascribed to the term "Project Costs" in Section 609.2 of Attachment G, and as specifically set forth in Section 609.12 of Attachment G.

E. Davis Bacon Requirements: Section 1705(c) of Title XVII requires that a recipient of support under Section 1705 must 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 IV of chapter 31 of title 40, United States Code (commonly referred to as the "Davis Bacon Act"). With respect to the labor standards specified in this Section, the Secretary of Labor shall have the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (64 Stat. 1267, 5 U.S.C. App.) and section 3145 of title 40 United States Code. See <http://www.dol.gov/esa/whd/contracts/dbra.htm>. Failure to provide such reasonable assurances in respect of a project will adversely impact the availability of appropriated funds under the Recovery Act to cover the Credit Subsidy Cost for that project. The applicant will be required in the Loan Guarantee Agreement to make representations and warranties, covenant to, and satisfy conditions precedent to closing and to each disbursement that, in each case, relate to its compliance with the Davis Bacon Act and all applicable the Davis Bacon Act regulations, including all requirements set forth in 29 CFR 5.5(a). The applicant will be required to insert the contract clauses in 29 CFR 5.5 in all contracts, subcontracts and other agreements with entities employing laborers and mechanics in the performance of the project for which Recovery Act funds are used to pay the Credit Subsidy Cost and is responsible for such compliance by any such contractor, subcontractor and other entity. Copies of these authorities may be found at http://www.dol.gov/dol/allcfr/Title_29/Part_5/Subpart_A.htm, and a copy of 29 CFR 5.5(a) is attached hereto in Attachment H.

F. 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. Successful applicants will be required to comply with all requirements of the Recovery Act, Title XVII (excluding Section 1703), the OMB Implementing Guidance, Attachment G and this Solicitation, as shall be provided for in any Loan Guarantee Agreement entered into between the applicant and DOE. Applicants should consult the DOE website, www.energy.gov, the OMB website, <http://www.whitehouse.gov/omb/>, and the Recovery website, www.recovery.gov, regularly to keep abreast of guidance and information as it evolves.

All reporting is expected to be posted on 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.

G. Buy American: Section 1605 of the Recovery Act prohibits the use of funds appropriated or otherwise made available by the 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. The law requires that this prohibition be applied in a manner consistent with U.S. obligations under international agreements, and it provides for waiver under certain enumerated circumstances. OMB has issued interim guidance on these requirements at 2 CFR §176.60 to §176.70. Applicants must comply with all requirements of the Recovery Act, including this provision, and the OMB Implementing Guidance. If Section 1605 of the Recovery Act is applicable to a project, any Loan Guarantee Agreement entered into between the applicant and DOE will require compliance with this provision. Applicants should consult the DOE website, www.energy.gov, the OMB website <http://www.whitehouse.gov/omb/>, and the Recovery website, www.recovery.gov, regularly to keep abreast of guidance and information as it evolves.

III. Overview of the Process for Obtaining a Loan Guarantee

The loan guarantee application process is organized into the following four (4) phases. DOE will consult with the U.S. Department of the Treasury ("Treasury"), the U.S. Office of Management and Budget ("OMB") and DOE's Credit Review Board ("CRB") during these four phases as DOE deems appropriate or as required by law or regulation:

- 1) **Application:** Project Sponsors may submit applications in response to this Solicitation in accordance with the detailed instructions provided in Attachments A1 and A2. An aggregate application fee is payable in the proportionate amounts set forth in Attachment C upon the submission of each of Parts I and II of the application.
- 2) **Project Evaluation by DOE:** During the evaluation of an application, described in further detail in Section IV, DOE will undertake its due diligence and project underwriting, with the assistance of its independent consultants and outside counsel. As a result, it is expected that extensive dialogue between DOE and the applicant will occur with respect to all aspects of the project. Based on the information

provided by the applicant, appropriate environmental review and DOE's due diligence results, a project evaluation report will be prepared.

- 3) **Term Sheet/Conditional Commitment:** At an appropriate point in the process, DOE may provide the applicant with a Term Sheet as described in Section 609.8 of Attachment G. The issuance or negotiation of a Term Sheet does not constitute a commitment by DOE to issue a loan guarantee. DOE will promptly notify the applicant, in writing, of any DOE decision not to finalize a Term Sheet. If the applicant agrees with and executes a final Term Sheet approved by the CRB, the Term Sheet becomes a Conditional Commitment between DOE and the applicant, and at this time the applicant must pay to DOE the facility fee (or Second Fee) as set forth in Attachment C for its application to be considered further. In accordance with Section 609.2 of Attachment G, the Secretary may terminate a Conditional Commitment for any reason at any time prior to the execution of the Loan Guarantee Agreement; provided, however, the Secretary may not delegate his/her authority to terminate a Conditional Commitment. In addition, if an Eligible Project does not commence construction by September 30, 2011, as required by Section 1705(a) of Title XVII, DOE will withdraw any Conditional Commitment entered into in connection with such project.
- 4) **Final Approval of the Loan Guarantee Agreement and Closing:** Closing of a transaction contemplated by a Conditional Commitment will be in accordance with Section 609.9 of Attachment G and otherwise subject to the terms of the Conditional Commitment. At or prior to the closing, if the applicant satisfies all applicable portions of Title XVII, including Section 1705, Attachment G and all other applicable requirements of the Recovery Act and this Solicitation, DOE will pay the Credit Subsidy Cost, subject to the availability of funds, and the applicant must pay at closing the maintenance fee (Third Fee), as set forth in Attachment C. If an Eligible Project does not commence construction on or before September 30, 2011, as required by Section 1705(a) of Title XVII, DOE will terminate any Loan Guarantee Agreement entered into in connection with such project.

Requests by DOE for additional information, documentation, or briefings do not signify that a project has been selected for due diligence, underwriting and negotiation or approved for a loan guarantee.

IV. Application Phase

1. **Objectives:** In accordance with Attachment G and applicable portions of Title XVII, including Section 1705, and of the Recovery Act, 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 all applicable portions of Title XVII, including Section 1705, and of the Recovery Act, Attachment G 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 in Section I.C. above, including demonstrating that there is a reasonable prospect of repaying the principal and interest on the guaranteed portion of the Guaranteed Obligation, as well as on other project debt, which will be incurred.

2. **General Schedule:** The application is divided into two parts, namely a Part I and a more detailed Part II. A fully completed Part I submission, together with a substantially complete Part II submission, prepared in accordance with Section 609.6 of Attachment G and all applicable portions of Title XVII, including Section 1705, and of the Recovery Act and other requirements of this Solicitation shall constitute a substantially complete application under this Solicitation (an “Application”). 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. These schedules include items such as licensing or regulatory permits and approvals, site preparation and long lead procurements, and provide DOE with the basis for determining the overall eligibility of the project. The Part II submission consists of the items required by Section 609.6 of Attachment G 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. Detailed instructions for the contents of the Parts I and II submissions are set forth in Attachments A1 and A2, respectively, and instructions for the format requirements of Parts I and II submissions are set forth below in Section V, “Application Submission Requirements.” A complete Part I submission must be received by the DOE not later than 11:59pm Eastern Time (“ET”) on September 8, 2009. Payment for the initial 25% application fee must be paid contemporaneously with the applicant’s Part I submission. The application fee is non-refundable. See Attachment F for details on communication procedures.

As set forth in Section IV.6 below, there will be three rounds of review for Part 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. Accordingly, Part II submissions may be filed no later than 11:59pm Eastern Time (“ET”) on any of the due dates set forth in Section IV.6 below for rounds of Part II submissions but in no event later than 11:59pm ET on January 25, 2010, the due date for the third and 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. The Part II information may be filed at any time 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 under this Solicitation.

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.

3. **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 making submissions in earlier rounds of Part II 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 Attachment G and as required by this Solicitation in Attachments A1 and A2. DOE will competitively evaluate against each other all Part II submissions filed with DOE during any given round of review as set forth in Section IV.6 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. During each round of Part II reviews, communications from the applicants to DOE are generally not permitted with respect to the applicants' applications, except in instances when the applicant is required to respond to DOE's written notification to such applicant. As more fully described in Section IV.5 below, selection of projects for due diligence review will be made after the closing of each round of Part II review.

4. **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 with substantial progress or likelihood to commence construction by September 30, 2011, which is well documented in the Part I submission.

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 in Section IV.6 below for rounds of Part II reviews but in no event later than 11:59pm ET on January 25, 2010, the due date for the third and final round of Part II submissions. On each 90th day following the due date for the particular round of Part II reviews, an applicant must update the information provided in its application and supply all information then available which is required for the application but not previously submitted. Such 90-day updates are required throughout the loan guarantee process for the applicant to receive continued consideration.

5. **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 in Attachment A3 and in Section 609.7 of Attachment G 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 applicable portions of Title XVII, including Section 1705, and of the Recovery Act, Attachment G and the underwriting criteria for this Solicitation. DOE shall endeavor 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. As noted above, such applicants must provide DOE with application updates every 90 days for their applications to receive continued consideration.
6. **Summary of Application Schedule:** The following table summarizes the application schedule:

Solicitation Issue Date	July 29, 2009
Part I Submissions Due	September 14, 2009
First Round Part II Submission Due	October 26, 2009
Second Round Part II Submission Due	December 10, 2009

Submissions are due not later than 11:59pm ET on each of the submission due dates set forth above. In the event that a due date falls 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, consistent with the wire transfer instructions set forth in Attachment C, to assure that Treasury receives applicable fees with corresponding submissions by the dates specified above.

7. **Application Evaluation:** Part I submissions will be preliminarily reviewed based on the factors outlined in Attachment A3 Tab 1, including the mandatory factors set forth therein, but more fully described in Attachment A3 Tab 2. Part I application submissions, together with substantially complete Part II application submissions, will be evaluated utilizing the criteria set forth in Attachment A3 Tab 2, which includes criteria based on Section 1705 of Title XVII, the Recovery Act, Attachment G, including Section 609.7 thereof, and this Solicitation. Consistent with the objectives and terms of the Recovery Act, including Section 1705(b) of Title XVII, DOE shall consider the following factors, as included within Attachment A3 Tab 2, in determining to make guarantees to electric power transmission projects described in Section 1705(a)(2):
- (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, nor those set forth in Attachment A3 Tab 2, is considered a mandatory requirement but is rather evaluated as a factor in any Eligible Project, along with the other criteria set forth in Section 609.7(b) of Attachment G, and those more fully described in Attachment A3 Tab 2 of this Solicitation. Projects that support the generation of power from renewable energy sources will receive special consideration. DOE's intention is to fund through this Solicitation the combination of projects that together best meets the criteria in Section 609.7(b) of Attachment G and Attachment A3 Tab 2.

Proposed projects eliminated by any of the Threshold Determinations set forth in Section 609.7(a) of Attachment G or in Section II above will not receive any further consideration.

For purposes of this Solicitation only, technical factors will consist of thirty percent (30%) of the total weighting, programmatic factors will form twenty percent (20%) of the total weighting and financial factors fifty percent (50%) of the total weighting in selecting projects for loan guarantees. The chart below provides details on the relative weightings.

Criteria

Weighting

Technical Review

Technical Relevance and Merit	10.0%
Technical Approach/Work Plan	10.0%
Environmental Benefits	10.0%
Programmatic Review	
Construction Factors	10.0%
Legal and Regulatory Factors	10.0%
Creditworthiness of the Project	<u>50%</u>
Total	100%

The above factors are set forth more fully in Attachment A3 Tab 2 under the section entitled “Application Evaluation Factors.” Applicants should further familiarize themselves with the information in Attachment A3 Tab 3, entitled “Desired Outcomes,” in developing project structures and in responding to this Solicitation.

8. **Independent Consultants and Outside Counsel to DOE:** DOE expects to utilize independent consultants and outside legal counsel in all aspects of the loan guarantee process, including, but not limited to, due diligence, underwriting, negotiation, documentation and operations. Applicants are advised that the applicant shall be responsible for paying the fees and expenses of DOE’s independent consultants and outside legal counsel in connection with applicant’s project under all circumstances. At any time following the date on which the initial portion of the application fee is due (see Section V below), DOE may determine in its sole discretion to engage independent consultants or outside counsel with respect to an application. Upon making such determination, DOE shall proceed in evaluating and the processing of an application only upon a Project Sponsor’s entering into a payment agreement regarding each consultant or outside counsel engaged by DOE to provide services to DOE on the applicant’s project. Such payment agreements are subject to review and approval by DOE and shall be executed by a Project Sponsor of acceptable creditworthiness prior to any work being performed by the consultant or outside counsel. In the event that a Project Sponsor fails to comply with the provisions of such payment agreement, DOE may stop work on the application and/or reject an application. The payment agreements shall require that the responsible Project Sponsor or Borrower make periodic payments for the fees and expenses of DOE’s independent consultants and outside counsel during the loan guarantee process, including prior to a financial closing (if any).

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).

Applicants are advised that such services shall be rendered for the benefit of DOE in connection with an applicant's project and that DOE is the client of such independent consultants and outside counsel. 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.

9. **Non-Selection and Future Consideration:** Pursuant to Section 609.7(d) of Attachment G, applicants with whom DOE decides not to proceed with further negotiations will be informed in writing of the reason for their non-selection. This determination by DOE shall be final and non-appealable but will not prejudice the applicant from applying under a future solicitation under which it is eligible.
10. **Multiple Applications:** More than one application may be submitted by an applicant.

V. **Application Submission Requirements**

1. **Documentation:** Complete applications must meet all applicable requirements of Title XVII, including Section 1705, and the Recovery Act, Attachment G and this Solicitation. DOE expects that the information and documentation requested will conform substantially in scope, quality and detail with that produced during the course of an arm's length, commercially negotiated project for commercial financing of this scale.
2. **Electronic Submission of Applications:** In order for an application to be considered under this Solicitation, the Part I submission must be electronically received through FedConnect no later than 11:59pm ET, September 14, 2009, and the Part II submission must be electronically received through FedConnect no later than 11:59pm ET on any of the due dates for the three rounds of Part II reviews as set forth in Section IV.6 above in order for it to receive consideration during the round corresponding with the due date. Instructions on how to register in FedConnect, how to submit an application via FedConnect, and other related topics may be found at: www.fedconnect.net. The applicant must also submit, at the time of its Part I submission, two hard copies of a completed DOE application form, OMB No. 1910-5134 (see Attachment D), and an electronic copy via FedConnect. While the Part I submission through FedConnect shall serve as the official version sent to DOE, applicants are also required to send its Part I submission on a CD-Rom to the Loan Guarantee Program Office ("LGPO") at the address listed in Attachment F, Section 2, which should arrive by express mail at DOE no later than September 14, 2009. Each reference in Attachment D to sections of 10 CFR Part 609 shall be deemed under this Solicitation to be a reference to the corresponding section of Attachment G. Similarly, each reference in Attachment D to Title XVII shall be deemed to be a reference to Title XVII, as amended, including by Section 406 of the Recovery Act. The initial portion of the non-refundable application fee (i.e., 25%) as set forth in Attachment C must be submitted at the same time on September 14, 2009, along with the applicant's Part I submission, and

wired to Treasury (See Attachment C). The balance of the non-refundable application fee (i.e., 75%) as set forth in Attachment C must be submitted at the same time as applicant's Part II submission not later than 11:59 pm ET on the due date for the particular round of Part II reviews as set forth in Section IV.6 above in which the applicant wishes its project to receive DOE consideration and wired to Treasury (See Attachment C). Applicants must submit their applications in accordance with the instructions contained herein and in Attachments A1 and A2.

Further, it is the responsibility of the applicant, prior to the due date and time, to verify successful transmission. The submission completion time of the entire proposal at the FedConnect portal will constitute the time of delivery to the DOE point of entry. See Attachment F for Communications Instructions.

3. **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 Registry ("CCR"), and
 - Register with FedConnect.

Applicants are highly encouraged to allow at least 21 days to complete the above listed steps. When completed, applicants should contact the FedConnect support team at support@fedconnect.net to verify successful registration. Instructions for registering with CCR and FedConnect are found in Attachment F.

For questions regarding the operation of FedConnect, applicants should contact the FedConnect support team at support@fedconnect.net.

4. **Part I Application Submissions:** Part I application submissions must be prepared in accordance with the instructions in Attachment A1 and must be accompanied by the following submittals:
 - Payment of 25% of the non-refundable application fee set forth in Attachment C.
 - A letter of commitment from the applicant, signed by an authorized representative, stating that the applicant intends to pursue a loan guarantee to close and to submit a Part II submission no later than 11:59 pm ET on the due date for the particular round of Part II reviews as set forth in Section IV.6 above in which the applicant wishes its project to receive DOE consideration, and confirming that all mandatory requirements in Attachments A1 to A3 have been met. See Attachment E.
 - A copy of applicant's Part I submission on a CD-Rom sent to the address listed in Attachment F, Section 2, which should arrive by express mail at DOE no later than September 14, 2009.
5. **Part II Application Submissions:** Part II application submissions must be prepared in accordance with the instructions in Attachment A2 and the payment of the balance of the non-refundable application fee (i.e., 75%), as set forth in Attachment C, must be remitted

contemporaneously with the Part II submission no later than 11:59 pm ET on the due date for the particular round of Part II reviews as set forth in Section IV.6 above in which the applicant wishes its project to receive DOE consideration. While the Part II submission through FedConnect shall serve as the official version sent to DOE, applicants are also required to send its Part II submission on a CD-Rom to the LGPO at the address listed in Attachment F, Section 2, which should arrive by express mail at DOE no later than two (2) business days after the applicable due date by which applicant submitted its Part II by FedConnect.

6. **Detailed Preparation Instructions:** Documents supporting and forming a part of applications must be submitted electronically, 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.
7. **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.

VI. Post-Selection: Project Due Diligence, Underwriting and Negotiation

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 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 discussed more fully above in Section IV.8 of this Solicitation, in the course of DOE's due diligence review and negotiations with an applicant, DOE may utilize the services of independent engineering, technical, financial and marketing consultants and outside counsel. The applicant shall be responsible for paying the fees and expenses of DOE's independent consultants and outside legal counsel in connection with applicant's project under all circumstances.

DOE will undertake the following steps in the review process.

1. **Evaluate Financing Plan:** This involves a thorough review of the sources and uses of funds as proposed by the applicant. Aspects of the review will involve:

- 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 the applicable requirements of Title XVII, including Section 1705, the Recovery Act, Attachment G and this Solicitation; and
 - Assessment of the adequacy of proposed contingency and reserve funding.
2. **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. An important consideration in the financial viability assessment will be an evaluation of the assumptions underlying projected revenues and expenses and the likelihood that assumed technical performance will be achieved.
 3. **Determine Technical Efficacy:** This evaluation will commence with a thorough review of the applicant's engineering report (described in Attachment A2), including consideration of factors such as environmental impact, environmental (including climate change) and energy goals and infrastructure requirements. DOE may utilize its internal technical resources as well as independent third-party advice in reviewing the project's technical efficacy. DOE encourages each applicant to be as comprehensive as possible in obtaining the advice and services of its engineers. 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. In addition to the technical merits in terms of the engineering and construction plan, there will be an assessment of the ability of the project to enhance regional reliability goals, as well as to facilitate the meeting of environmental (including climate change) and energy goals of the nation or affected State or region. Projects that support the generation of power from renewable energy sources will receive special consideration.
 4. **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.
 5. **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.

6. **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 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. 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.
7. **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.
8. **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.
9. **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. DOE anticipates that most Transmission Infrastructure Investment Projects will likely require the preparation of an Environmental Impact Statement (“EIS”). In cases where an 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. The NEPA process and the list of environmental data that should be included in the application are found in Attachment B.

10. Issuance of Term Sheet: Upon the execution of a Term Sheet as described in Section IV above and Section 609.8 of Attachment G, the applicant must pay to DOE the non-refundable facility fee (or Second Fee) as set forth in Attachment C for its application to be considered further. 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 Attachment G, 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 their non-selection. This non-selection 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.

11. Conditional Commitment: In accordance with Section 609.8 of Attachment G, 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 on the Loan Guarantee Agreement, as described in Section 609.2 of Attachment G. The Secretary may not delegate the authority to terminate a Conditional Commitment.

VII. Closing

At or prior to the financial closing and execution of the Loan Guarantee Agreement, DOE will pay, subject to the availability of funds, the Credit Subsidy Cost for an 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, Attachment G and this Solicitation, and, if applicable, the applicant shall pay all or part of the non-refundable maintenance fee (or Third Fee) as set forth in Attachment C.

The general closing process and requirements are described in Section 609.9 of Attachment G. 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 or 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.

VIII. Fees, Credit Subsidy Cost Payment and Extraordinary Expenses

1. **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. Attachment G specifies the stages of the loan guarantee process at which applicants must pay to DOE the Administrative Costs of Issuing a Loan Guarantee. Section 609.10(c) of Attachment G provides 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.” A fee schedule and payment instructions for this particular Solicitation are presented in Attachment C. These fees are non-refundable and will be due in full as specified below:
 - **Application Fee:** Twenty-five percent (25%) of the aggregate application fee (or First Fee) set forth on Attachment C must be remitted to DOE with the applicant’s submission of Part I of its application no later than September 14, 2009. The balance of seventy-five percent (75%) of the aggregate application fee is due when the applicant’s initial Part II submission is made to DOE by the due date for the particular round of Part II reviews as set forth in Section IV.6 above in which the applicant wishes its project to receive DOE consideration.
 - **Facility Fee:** The facility fee (or Second Fee) is due upon the execution by the applicant of the Term Sheet approved by the CRB.
 - **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 \$200,000 to \$400,000 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 a 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.
2. **Loan Guarantee Credit Subsidy Cost:** Section 1702(b) of Title XVII provides that DOE must receive either an appropriation for the Credit Subsidy Cost of a loan guarantee or, in lieu of an appropriation, a cash payment of such cost directly from the applicant. The Credit Subsidy Cost is the net present value of the estimated long-term cost to the U.S. government of the loan guaranteed as determined under the applicable provisions of the Federal Credit Reform Act of 1990, as amended (“FCRA”). DOE has received under the Recovery Act appropriated amounts from Congress to cover the Credit Subsidy Costs associated with the potential loan guarantees issued under this Solicitation. Therefore, DOE anticipates that it will directly pay, subject to the availability of funds, the Credit Subsidy Cost at or before the closing for projects that satisfy all of the applicable requirements of Title XVII, including Section 1705, and of the Recovery Act, Attachment G and this Solicitation. In accordance with FCRA and Attachment G, DOE must consult with, and obtain the approval of, OMB for DOE’s calculation of the Credit Subsidy Cost of each loan guarantee prior to entering into any Loan Guarantee

Agreement. DOE must also consult with Treasury on the terms and conditions of the Conditional Commitment.

3. **Extraordinary Costs and Expenses.** In accordance with Section 1702(h) of Title XVII, the Loan Guarantee Agreement will provide that in the event that a project experiences technical, financial, legal or other events (e.g., engineering failure or financial workouts) that require DOE to incur time or expenses beyond standard monitoring, 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 counsel..

IX. Additional Information

1. **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 as a basis for negotiation.
2. **Commitment of Public Funds:** DOE shall not be bound by oral representations made during the pre-application stage, applications stage or during any negotiations. No binding commitment, agreement, obligation, or right of any kind may be assumed or enforced by any applicant or Project Sponsor against DOE other than in accordance with an executed Loan Guarantee Agreement, as executed by the appropriate DOE authorizing official.
3. **Restrictions on Disclosure and Use of Information:** Title XVII authorizes the collection of the information requested in the application. The primary use of this information is by DOE in its review of applications for loan guarantees under Title XVII. Additional disclosures of this information may be made as required by law. Where the information provided is a social security number, the provision of the information is voluntary but failure to disclose may result in disapproval of the application.

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:

- a. Applicant includes the following statement in the DOE application form which specifies the application sections containing proprietary data in the legend as it appears in its 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 amended, 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."

- b. 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, which specifies 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 amended, 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."

- c. 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) specifically identifying and marking 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."

4. **References:** This Solicitation was developed pursuant to the following statutes and regulations, which can be found at the Program Website:

- (a) Energy Policy Act of 2005
Public Law 109-58 (August 8, 2005)
Title XVII Incentives for Innovative Technologies
22 USC 16511- 16514 (August 8, 2005)

- (b) American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5:
Division A, Title IV. Department of Energy Programs, "Title 17 – Innovative Technology Loan Guarantee Program"

Section 406. Renewable Energy and Electric Transmission Loan Guarantee Program (amends Title XVII to create a "Temporary Program for Rapid Deployment of Renewable Energy and Electric Power Transmission Projects" under new Section 1705)

Section 1512. Reports on Use of Funds.

Section 1605. Buy American

- (c) The Office of Management and Budget's (OMB) Updated Implementing Guidance for the Recovery Act. See M-09-15 (April 3, 2009) located at http://www.whitehouse.gov/omb/assets/memoranda_fy2009/m09-15.pdf

- (d) OMB's Updated Implementing Guidance for the Recovery Act. See M-09-21 (June 22, 2009) located at http://www.whitehouse.gov/omb/assets/memoranda_fy2009/m09-21.pdf
- (e) 29 CFR Parts 1, 3, and 5- Contract provisions and related matters under the Davis Bacon Act located at http://www.dol.gov/dol/allcfr/Title_29/Chapter_I.htm
- (f) U.S. Department of Labor Wage and Hour Division, Davis Bacon and Related Acts located at <http://www.dol.gov/esa/whd/contracts/dbra.htm>
- (g) Selecting Davis Bacon Act Wage Decisions located at <http://www.wdol.gov/dba.aspx#0>
- (h) The Recovery Act website at www.recovery.gov

Attachment A1

Requirements for Part I Application Submission

**UNITED STATES
DEPARTMENT OF ENERGY**

**APPLICATION INSTRUCTIONS FOR TRANSMISSION INFRASTRUCTURE
INVESTMENT PROJECTS
Section 1705 Loan Guarantee Program**

Background These instructions set forth the information to be submitted under the applicable requirements of Title XVII of the Energy Policy Act of 2005, as amended (Title XVII), including Section 1705, and of the Recovery Act for an application to receive a loan guarantee from the United States Department of Energy (“DOE”) under Section 1705 of Title XVII. Section 1705 of Title XVII authorizes the Secretary of Energy (“Secretary”) to issue loan guarantees only for certain categories of projects, including electric power transmission systems, that commence construction no later than September 30, 2011. DOE will use the information submitted by applicants to evaluate and select projects for a loan guarantee issued under Section 1705 of Title XVII. Applicants may be asked to provide additional information during the review and negotiation process. If there are material changes to the project after either of the original Parts I and II application submissions are filed with DOE, the applicant must promptly provide DOE with written notice of such change but in no event later than three (3) business days after such change and shall provide DOE with any updated information no later than ten (10) business days after such notice, regardless of when the next 90-day period update is due.

Application Fee A non-refundable application fee of \$800,000 must be paid to DOE with the submission of the application, \$200,000 of which is payable upon the submission of Part I of the application and the remaining \$600,000 of which is payable upon the submission of Part II of the application. No funds for the payment of these fees shall be obtained from the federal government or from a loan or other instrument guaranteed by the federal government. (Attachment G, Section 609.10(c).)

Format Applicant must provide all requested information in the following format:

1. The application is divided into two parts:
 - A. Part I – Executive Summary/Initial Information/Overview
 - B. Part II – Due Diligence Information Requirements
2. Each part is organized into six identical sections. The Part I submission is expected to provide less detail than the Part II submission. The data in Part II builds on the information submitted in Part I.
3. Each data element in each section is named and numbered using the following format:

Project Short Name/Part Number/Section/Data Number/Name

Example: Project XXX /I /C / 3 / Potential Environmental Impacts (for this example see page I-C-1).

4. Each data change or correction requires a complete new data entry instead of hand written mark ups. The changed information in the New Entry must be underlined or otherwise identified and the New Entry dated.
5. Part I and Part II together represent the complete application.

Part I Submissions: Part I submissions shall be prepared in accordance with Section 609.6 of Attachment G and the instructions in Attachment A1 and must be accompanied by the following submittals:

- A. Initial portion (25%) of the application fee payable with the submission of Part I as set forth in Attachment C and as required by Section 609.6(b)(2) of Attachment G.
- B. A DOE application form as appears in Attachment D and as required by Section 609.6(b)(1) of Attachment G that is fully completed and signed and submitted no later than 11:59pm ET on September 14, 2009. Submissions should include an electronic version of DOE Application Form – OMB No. 1910-5134 (Attachment D) through FedConnect and two signed paper copies to be submitted to the address contained on the form. Applicants are encouraged to submit the application form as soon as practical after receipt of the solicitation. Other supporting documentation can be submitted through FedConnect at a later date as long as all required information for Part I and Part II is submitted when due. While the Part I submission through FedConnect shall serve as the official version sent to DOE, applicants are also required to send its Part I submission on a CD-Rom to the Loan Guarantee Program Office (“LGPO”) at the address listed in Attachment F, Section 2, which should arrive by express mail at DOE no later than September 14, 2009.
- C. A letter of commitment from the applicant, signed by an authorized representative, in the form of Attachment E stating that the applicant intends to pursue a loan guarantee under Title XVII to close and provide to DOE a Part II submission no later than 11:59pm ET on the due date for the particular round of Part II reviews as set forth in Section IV.6 of the Solicitation in which the applicant wishes its project to receive DOE consideration and a date by which the applicant expects that it will be able to close a loan guarantee with DOE.

Part II Submissions: Part II submissions shall be prepared in accordance with Section 609.6 of Attachment G and the requirements in Attachment A2 and include the remaining portion of the application fee as set forth in Attachment C (75%) payable when the Part II submission is provided to DOE but in no event later than 11:59pm on the due date for the particular round of Part II reviews as set forth in Section IV.6 of the Solicitation in which the applicant wishes its project to receive DOE consideration. While the Part II submission through FedConnect shall serve as the official version sent to DOE, applicants are also required to send its Part II submission on a CD-Rom to the LGPO at the address listed in Attachment F, Section 2, which should arrive by express mail at DOE no later than two (2) business days after the applicable due date by which applicant submitted its Part II by FedConnect.

Electronic Format: The application must be submitted in electronic form in the following Microsoft Office formats: Word, Excel, Adobe PDF or PowerPoint. Please do not encrypt, compress or zip the files. Applications and supporting documentation must be submitted electronically through the FedConnect site at www.fedconnect.net. (See Attachment F). Applicants are also required to submit

its Part I and Part II submissions to the LGPO on CD-Roms by express mail at the address listed in Attachment F, Section 2, which should arrive at DOE, for Part I's, no later than September 14, 2009 and for Part II's, no later than two (2) business days after the applicable due date by which applicant submitted its Part II by FedConnect.

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 Registry (“CCR”), and
- Register with FedConnect.

Applicants are highly encouraged to allow at least 21 days to complete the above listed steps. Contact the FedConnect support team by email at support@fedconnect.net to verify successful registration. Instructions for registering with CCR and FedConnect are found in Attachment F. If you have questions regarding the operation of FedConnect, please contact the FedConnect support team by email at support@fedconnect.net.

Warning: It is a crime to knowingly make false statements to a federal agency. Penalties upon conviction can include a fine and imprisonment. For details, see 18 U.S.C. 1001. Misrepresentation of material facts may also be the basis for denial of an application for a loan guarantee from DOE.

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Application Information: Section A – Part I

1. **Project Name:** Assign a short project name for purposes of identification.
2. **Evidence of Authority:** Submit evidence that the signatory of the application has full authority to bind the Project Sponsors to the commitments and representations made in the application and attests as to the accuracy of the information provided both written and oral in the application process and that binds the Project Sponsors.
3. **Applicant Validation Statement:** Provide a written statement that based on the project information provided by the applicant for DOE consideration of issuance of a loan guarantee, the applicant hereby attests that there is a reasonable prospect that the guaranteed portion of the Guaranteed Obligation and any other project debt will be repaid on time and in full (including interest) from project cash flow according to the terms proposed in the application, as required by Section 609.6(b)(28) of Attachment G.
4. **Eligible Lender / Holder Statement:** If funds are to be provided by lenders other the Federal Financing Bank, provide a written affirmation from an officer of an eligible lender or other holders expressing commitment to provide, or interest in providing, the required debt financing necessary to construct and fully commission the project.
5. **Equity Commitment Letters:** Provide a copy of the equity commitment letters from each project investor and a description of the sources of equity.
6. **Project Participants:** List the parties (e.g., EPC contractor, vendors, etc.) involved with the project, their function and contact information, including name of contact person (first, middle and last), Position/Title, Phone Number, Fax Number, E-mail Address, Street Address, City, State, 9 Digit Zip code.
7. **Applicant Point of Contact Information:** Provide the mailing address of the applicant and phone, fax and e-mail address of the applicant's project point of contact for DOE.

Project Description: Section B – Part I

1. **Executive Summary:** Provide a description of the nature and scope of the proposed project including the purpose, design features, capacity and estimated total capital cost. Provide a top level description of the site location, facility and construction plans. Include your target date to close a loan guarantee, to commence site preparation, and for grid connection. Describe any potential legal or regulatory risks to the project. Describe status of all license applications and permits.
2. **Technology Description:** Provide a description of the technology to be employed and its commercial feasibility. If applicable, discuss why it is not now in general use and how the applicant intends to employ such technology in the project. Describe the applicant's rights to such technologies, including the status and expiration date of all licensing agreements required for the project.
3. **Project Eligibility:** Provide a detailed explanation of how and to which measure the proposed project will meet all applicable requirements of Title XVII, including Section 1705 but excluding Section 1703, and of the Recovery Act, the Solicitation and Attachment G, especially with respect to:
 - a. An explanation of how the project satisfies at least one of the technical criteria under the definition of "Transmission Infrastructure Investment Project" as set forth in Section II.A. of this Solicitation (e.g., at least 100 miles of 500 kV, etc.);
 - b. An explanation demonstrating that private sources of financing on standard commercial terms are not available for the project. Include any substantiating support for this explanation.
 - c. An explanation of the technology to be used in the project, including a description of whether such technology is a Commercial Technology; and
 - d. An explanation of the likelihood that the project will commence construction on or before September 30, 2011, including a description of (i) the extent to which all required contractors are engaged, (ii) the readiness for delivery of major components and transmission equipment, (iii) the extent to which all pre-construction design and prototype testing has been completed, (iv) the extent to which definitive interconnection agreements have been finalized and executed, (v) the creditworthiness of the buyer under any transmission service agreements or other offtake agreements (if any), (vi) the likelihood and nature of rate base treatment, if applicable, and (vii) the extent to which all necessary land rights and state and local permits, as well as environmental clearances necessary to proceed, have been obtained or approved. Note that DOE may require additional information to clarify, supplement or explain these descriptions.
4. **Organization:** Provide a current organizational chart showing the applicant's structure, relationship to any subsidiaries or affiliates, and to the project. Advise if there are any proposed changes to the current organizational structure. List the full names (including middle name or initial), home address (including zip code), date of birth and taxpayer identification/social security number of key staff to be involved with the project. DOE will use

this information for background check purposes and, with respect to certain key staff providing credit support to the project, for credit history verification purposes. DOE may request additional documentation as part of the project evaluation process.

5. **Prior Experience:** Describe the prior organizational experience of each project participant described in Part I.A.6 as it relates to carrying out projects similar to the one being proposed.
6. **Proposed Project Location:** Identify the proposed location and the rationale for the site location.
7. **Project Time Lines:** Provide a time line of the estimated start and completion dates of each major phase or key milestone of the project from construction through start of operations. Include early site preparation start, and first grid connection. Indicate current progress on time lines.
8. **List and Status of Licenses/Permits/Approvals:** Provide a list of Federal, state and local licenses, permits and approvals that will be required to complete this project and the current status and estimated approval date for each. Explain whether governmental entities (other than DOE) are required to approve the activities of the applicant under this Solicitation, the funding of activities or the carrying out of activities described in the application. Include relevant documentation.
9. **Summarized Total Project Cost:** Provide a high-level estimated total cost of the project and an estimated breakdown by cost category and purpose, which in the aggregate exceeds no more than 3 pages.
10. **Loan Guarantee Impact:** Provide an explanation of what estimated impact the DOE loan guarantee will have on the interest rate, debt term and overall financial debt structure of the project, as well as a description of the viability of the project without such DOE loan guarantee.

Technical Information: Section C – Part I

1. **Major Project Plans:** Provide a description, status and associated costs of key project plans, including:
 - a. Construction Plan, including Right-of-Way Acquisition (if any remains to be done)
 - b. Operations & Maintenance Plan
 - c. Any remaining permits under Federal, State or local laws
2. **Potential Reliability Impacts:** Provide a summary of the reliability impacts to be achieved with the completion of the project and demonstrate how those impacts will be achieved and the importance of those impacts in meeting the reliability needs of the national or local electric grid.
3. **Potential Environmental Impacts:** Provide an outline of potential environmental impacts of the project and how impacts will be mitigated. Details on required environmental information are contained in Attachment B, NEPA Guidance. Demonstrate how completion of the project will facilitate the introduction of renewable energy sources to the energy marketplace. Also provide a description substantiating 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 in which the project is involved or located or of the two or more States of the United States that the project exists between or connects.
4. **Support to Renewable Energy Sources:** Provide a description of how the project supports the generation of power from renewable energy sources.

Business Plan: Section D – Part I

1. **Potential Project Offtake:** Provide a summary-level view of the utilization of the line, and the plan for revenue production.
2. **Summary Business Plan:** Provide a top level review of the following elements of your business plan:
 - a. Financing Plan, including timing and amount of expected equity and debt funding
 - b. Market Analysis
 - c. Management Planning
 - d. Operational Risks and Mitigation Strategies
3. **Other Assistance as Source of Funds:** Provide a list of other Federal and non-Federal governmental (including State) incentives or other assistance on which the project relies, including grants, tax credits, or other loan guarantees to support the financing, construction and operation of the project.
4. **Types of Jobs Created/Retained:** Provide a brief description of the types of jobs expected to be created or retained in the United States as a result of the project. For purposes of Section 1512 of the Recovery Act, “jobs expected to be created” means those new positions reasonably expected to be created and filled, or previously existing unfilled positions that are reasonably expected to be filled, as a result of Recovery Act funding, and "jobs or positions expected to be retained" means those previously existing filled positions that are reasonably expected to be retained as a result of Recovery Act funding. Such descriptions may also rely on job titles, broader labor categories, or the borrowers’ existing practice for describing jobs as long as the terms used are widely understood and explain the general nature of the work. Note that a job cannot be reported as both created and retained.
5. **Estimated Number of Jobs Created/Retained:** An estimate of the number of jobs expected to be created and retained in the United States as a result of the project. At a minimum, this estimate shall include any new positions reasonably expected to be created and any existing filled positions that are reasonably expected to be retained to support or carry out Recovery Act projects or activities managed directly by the borrower, and if known, by sub-recipients. The number shall be expressed as “full-time equivalent” (FTE), calculated cumulatively as all hours worked divided by the total number of hours in a full-time schedule, as defined by the borrower. For instance, two full-time employees and one part-time employee working half days would be reported as 2.5 FTE in each calendar quarter. Because FTE is calculated based on aggregate hours worked, temporary or part-time labor is not overstated. Applicants are encouraged to include information in their narrative used to calculate the FTE figure.

Financial Plan: Section E – Part I

1. **Background and Legal Structure:** Describe the applicant’s history, ownership, and legal structure (e.g., state governmental agency, local governmental agency, corporation, or partnership) and the relationship between the applicant and the Borrower. Include a copy of the statutory authority under which the entity was created.
2. **Legal Authority:** Describe the legal authority of the applicant to carry out the proposed project activities (e.g., issuing debt, charging fees). Provide supporting documentation.
3. **Summary Forecasted Project Financial Statements:** Provide summary-level forecast financial statements at the project level (or at the corporate level if this is to be a corporate credit) for the term of the guaranteed portion of the proposed Guaranteed Obligation.

Application Certifications: Section F – Part I

1. **Lobbying, Debarment and Related Certifications and Assurances:** In submitting an application for a loan guarantee under Title XVII, applicants must provide certain certifications and assurances contained in the form entitled “U.S. Department of Energy Loan Guarantee Certifications and Assurances.” It may be downloaded from the DOE website:

http://www.management.energy.gov/business_doe/business_forms.htm

All references made to part 609 under title 10 of the Code of Federal Regulations in the form entitled “U.S. Department of Energy Loan Guarantee Certifications and Assurances” shall be deemed to be a reference to Attachment G attached to this Solicitation.

DOE may require that applicants provide additional certifications or supporting documentation as part of the project evaluation process.

Attachment A2

Requirements for Part II Application Submission

**UNITED STATES
DEPARTMENT OF ENERGY**

**APPLICATION INSTRUCTIONS FOR TRANSMISSION INFRASTRUCTURE
INVESTMENT PROJECTS
Section 1705 Loan Guarantee Program**

Background These instructions set forth the information to be submitted under the applicable requirements of Title XVII of the Energy Policy Act of 2005, as amended (Title XVII), including Section 1705, and of the Recovery Act for an application to receive a loan guarantee from the United States Department of Energy (“DOE”) under Section 1705 of Title XVII. Section 1705 of Title XVII authorizes the Secretary of Energy (“Secretary”) to issue loan guarantees only for certain categories of projects, including electric power transmission systems, that commence construction no later than September 30, 2011. DOE will use the information submitted by applicants to evaluate and select projects for a loan guarantee issued under Section 1705 of Title XVII. Applicants may be asked to provide additional information during the review and negotiation process. If there are material changes to the project after either of the original Part I and Part II application submissions are provided, the applicant must promptly provide DOE with written notice of such change but in no event later than three (3) business days after such change and shall provide DOE any updated information no later than ten (10) business days after such notice, regardless of when the next 90-day period update is due.

Application Fee A non-refundable application fee of \$800,000 must be paid to DOE with the submission of the application as set forth in Attachment C, \$200,000 of which is payable upon the submission of Part I of the application and the remaining \$600,000 of which is payable upon the submission of Part II of the application. No funds for the payment of these fees shall be obtained from the federal government or from a loan or other instrument guaranteed by the federal government. (Attachment G, Section 609.10(c).)

Format Applicant must provide all requested information in the following format:

1. The application is divided into two parts:
 - A. Part I – Executive Summary/Initial Information/Overview
 - B. Part II – Due Diligence Information Requirements
2. Each part is organized into six identical sections. The Part I submission is expected to provide less detail than the Part II submission. The data in Part II builds on the information submitted in Part I.
3. Each data element in each section is named and numbered using the following format:

Project Short Name/Part Number/Section/Data Number/Name

Example: Project XXX /I /C / 3 / Potential Environmental Impacts (for this example see page I-C-1).

4. Each data change or correction requires a complete new data entry instead of handwritten mark ups. The changed information in the New Entry must be underlined or otherwise identified and the New Entry dated.
5. Parts I and Part II together represent the completed application.

Part I Submissions: Part I submissions shall be prepared in accordance with Section 609.6 of Attachment G and the instructions in Attachment A1 and must be accompanied by the following submittals:

- A. Initial portion (25%) of the application fee payable with the submission of Part I as set forth in Attachment C and as required by Section 609.6(b)(2) of Attachment G.
- B. A DOE application form as appears in Attachment D and as required by Section 609.6(b)(1) of Attachment G that is fully completed and signed and submitted no later than 11:59pm ET on September 14, 2009. Submissions should include an electronic version of DOE Application Form – OMB No. 1910-5134 (Attachment D) through FedConnect and two signed paper copies to be submitted to the address contained on the form. Applicants are encouraged to submit the application form as soon as practical after receipt of the solicitation. Other supporting documentation can be submitted through FedConnect at a later date as long as all required information for Part I and Part II is submitted when due. While the Part I submission through FedConnect shall serve as the official version sent to DOE, applicants are also required to send its Part I submission on a CD-Rom to the Loan Guarantee Program Office (“LGPO”) at the address listed in Attachment F, Section 2, which should arrive by express mail at DOE no later than September 14, 2009.
- C. A letter of commitment from applicant, signed by an authorized representative, in the form of Attachment E stating that the applicant intends to pursue with DOE a loan guarantee under Title XVII to close and submit a Part II submission no later than 11:59pm ET on the due date for the particular round of Part II reviews as set forth in Section IV.6 of the Solicitation in which the applicant wishes its project to receive DOE consideration and a date by which the applicant expects that it will be able to close a loan guarantee with DOE.

Part II Submissions: Part II submissions shall be prepared in accordance with Section 609.6 of Attachment G and the instructions in this Attachment A2 and include the remaining portion of the application fee as set forth in Attachment C (75%) payable when the Part II submission is provided to DOE no later than 11:59pm on the due date for the particular round of Part II reviews as set forth in Section IV.6 of the Solicitation in which the applicant wishes its project to receive DOE consideration. While the Part II submission through FedConnect shall serve as the official version sent to DOE, applicants are also required to send its Part II submission on a CD-Rom to the LGPO at the address listed in Attachment F, Section 2, which should arrive by express mail at DOE no later than two (2) business days after the applicable due date by which applicant submitted its Part II by FedConnect.

Electronic Format: The application must be submitted in electronic form in the following Microsoft Office formats: Word, Excel, Adobe PDF or PowerPoint. Please do not encrypt, compress or zip the

files. Applications and supporting documentation must be submitted electronically through the FedConnect site at www.fedconnect.net. (See Attachment F). Applicants are also required to submit its Part I and Part II submissions to the LGPO on CD-Roms by express mail at the address listed in Attachment F, Section 2, which should arrive at DOE, for Part I's, no later than September 14, 2009 and for Part II's, no later than two (2) business days after the applicable due date by which applicant submitted its Part II by FedConnect.

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 Registry (“CCR”), and
- Register with FedConnect).

Applicants are highly encouraged to allow at least 21 days to complete the above listed steps. Contact the FedConnect support team by email at support@fedconnect.net to verify successful registration. Instructions for registering with CCR and FedConnect are found in Attachment F. If you have questions regarding the operation of FedConnect, please contact the FedConnect support team by email at support@fedconnect.net.

Warning: It is a crime to knowingly make false statements to a federal agency. Penalties upon conviction can include a fine and imprisonment. For details, see 18 U.S.C. 1001. Misrepresentation of material facts may also be the basis for denial of an application for a loan guarantee by the U.S. Department of Energy.

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Application: Section A – Part II

1. **Changes/Additions to Part I Submission:** Provide a detailed description of all material amendments, modifications, and additions to the information provided in Part I of the application, including any changes in the proposed project's financing structure or other terms, the rationale for such changes and the expected impact on the project.
2. **List of Requirements:** Pursuant to Section 609.6(b)(27) of Attachment G, provide a list of all requirements contained in this Solicitation, including Attachment G, and where in the application these requirements are addressed.

Project Description: Section B – Part II

1. **Detailed Total Cost:** Provide a detailed estimate of total project costs, including a breakdown by cost category, year of expenditure and basis for amounts and include a description of the methodology and assumptions used to make such estimate. Also indicate whether these costs are firm or subject to change. Distinguish between program eligible and non-eligible costs as set forth in Section 609.12 of Attachment G.
2. **Project Sponsor's Capabilities:** Describe the Project Sponsors' capabilities, financial strengths and investment both in the project to date and as anticipated during the operational phase of the project (e.g. continuing financial support). Detail the project's strategic significance to the Project Sponsors.
3. **State and Local Support:** Describe the status of potential and actual forms, amounts and conditions of state and local support for the project. Provide timelines for such assistance.
4. **Legal Opinions/Material Reports:** Provide a copy of all legal opinions, and other material reports, analyses and reviews concerning the project.

Technical Information: Section C – Part II

1. **Key Contracts and Agreements:** If drafts or executed copies are unavailable, provide a top level description, schedule and current status of all critical path contracts and agreements, whether entered into or proposed, relevant to the investment, design, engineering, financing, construction, startup commissioning, shakedown, operation and maintenance of the project, including:
 - Engineering Procurement Construction (EPC) Contract
 - Long Lead Procurements
 - Public Utility Commission (“PUC”) Agreements or Decisions
 - Transmission Service Agreements or Other Offtake Agreements
 - Operations and Maintenance (O&M) Contracts

2. **Engineering and Construction Plans:** List the engineering and design contractor(s), construction contractor(s), and equipment supplier(s) to be involved in the project, their major activity and cost milestones, and performance guarantees (e.g., bonds, liquidated damages provisions and equipment warranties to be provided). Provide their experience and qualifications as they relate to the proposed project. Include construction schedules for the project.

3. **Operating and Maintenance Plans:** Describe the plans for operating and maintaining the project, including the proposed providers, their expected staffing requirements, parts inventory, major maintenance schedules, estimated annual downtime, and any performance guarantees and related liquidated damages provisions.

4. **Decommissioning Plan:** Provide a detailed description of the project decommissioning, deconstruction and disposal plans, the anticipated costs, and arrangements to ensure the necessary funding will be available when needed.

5. **Permits and Approvals:** The applicant shall provide a complete list of federal, state and local permits and approvals required to site, construct, implement and operate the project, including environmental authorizations or reviews necessary to commence construction. For approvals already received, provide the filing and approval dates and parties involved; for those not yet received, provide the filing date, steps to be taken to obtain them, and expected date(s) they will be obtained.

6. **Engineer’s Report:** Include as an appendix an applicant’s engineering report prepared by an engineer with experience in the industry and familiarity with similar projects. The report should comprehensively evaluate the project’s siting and permitting, engineering and design, contractual requirements and arrangements, environmental compliance, testing and commissioning, and operations and maintenance.

7. **Environmental Report:** The National Environmental Policy Act (“NEPA”) requires all federal agencies to consider the potential impacts of their proposed actions. Discuss in detail expected timelines for project regulatory approvals, current NEPA status and state and local reviews, existing or anticipated legislation/regulation or litigation that could impact the project, current administrative or court proceedings, and the status of any appeals. The resulting

Environmental Report (“ER”) will not be point scored but used to assist DOE in determining the appropriate level of NEPA review and to facilitate DOE’s preparation of any required EA or EIS.

The application must provide sufficient information to enable DOE to determine the level of NEPA review/approval that will be required for loan guarantee consideration (i.e., whether an environmental assessment (“EA”) or an environmental impact statement (“EIS”) is required). DOE will consider any environmental review and assessment of the project prepared by another federal agency in connection with the project. If DOE determines that either an EA or an EIS, other than that produced by another federal agency in respect of a given project, is necessary, the applicant will hire an independent environmental consulting firm, satisfactory to DOE, with specific expertise in preparing the type of assessment to prepare a report evaluating the potential environmental impacts of the project. Detailed information on required environmental information can be found in Attachment B. To the extent that it satisfies DOE’s NEPA requirements, required environmental information may be extracted, as appropriate, from an applicant’s environmental report submitted in support of another federal license or permit application.

Business Plan: Section D – Part II

The applicant shall provide a business plan demonstrating its expertise, financial strength and management capability to undertake and operate the project as proposed. The business plan shall also present a detailed analysis of the construction and performance-related risks associated with the project (e.g., cost escalation or overruns, obtaining approvals and litigation) and safeguards/risk mitigation strategies (e.g., fixed price contracts, liquidated damages, warranties or other incentive/disincentive arrangements) to be employed, as well as a comprehensive project implementation plan for integrating and monitoring the various phases of the project. Taken together, the components of the business plan shall provide analyses demonstrating that, at the time of the application, there is reasonable prospect that the applicant will be able to repay the guaranteed portion of the Guaranteed Obligation (including interest) and any other project debt according to their terms, and a complete description of the operational and financial assumptions and methodologies on which this demonstration is based. The conclusions of the business plan shall include a statement from the applicant that it believes there is a reasonable prospect that the guaranteed portion of the Guaranteed Obligation and any other project debt will be fully paid from project revenue according to the terms proposed in the application.

1. **Financial Analysis:** Provide a detailed description of the overall financial plan for the proposed project, including quarterly sources and uses of funding, equity and debt statement for the construction period, prepared in accordance with U.S. GAAP, showing the timing and amount of expected equity and debt funding by institution, as well as a full set of financial projections (income statements, balance sheets and cash flow statements) prepared according to U.S. GAAP for the tenor of the proposed guaranteed portion of the Guaranteed Obligation. List the major assumptions in a separate worksheet of the model. Calculate at a minimum the current, leverage and debt service coverage ratios of the parties associated with the project based on the expected tenor of the guaranteed portion of the Guaranteed Obligation. Discuss the principal factors that could impair the project's ability to meet its debt service obligations.
2. **Market Analysis:** Include an analysis of the market for each transmission service to be provided by the project. Also discuss the prevailing economic and demographic trends in the target market, justification for revenue projections (price and volume), and potential competitors/substitutes. Provide evidence that a market exists for the services to be provided. If drafts or executed copies are not available, describe any sales arrangements (e.g., off-take agreements, transmission service agreements) that exist or are contemplated, including summaries of their key terms and conditions and executed letters of intent, as applicable. Discuss whether the facility will be a rate base facility and any provisions in federal, state or other law regarding the cost recovery, rate treatment or other financial matters with respect to the facility. DOE will conduct its own market analysis of the project.
3. **Project Sponsors' Involvement:** Describe each Project Sponsor's participation both in the project to date and as anticipated during the operational phase of the project (e.g., continuing financial support). Detail the project's strategic significance to each Project Sponsor.
4. **Contractual Arrangements:** Provide a copy of all material agreements (whether entered into or proposed) for the design, construction, start-up and operation of the project (e.g., engineering, raw material supply, commissioning and maintenance).

5. **Management Plan:** Provide an organizational chart showing the staff and positions expected to operate the project, their qualifications and track record. Describe the plan for operating the project.
6. **Operational Risks and Mitigation Strategies:** Based on the business plan information above, prepare an analysis showing the Strengths, Weaknesses, Opportunities and Threats for successful operation of the project (e.g., price declines, scarcity of raw materials, dependence on a particular technology supplier) and mitigation strategies.
7. **Progress Reports:** The applicant shall provide project progress reports to DOE or its agent(s) during the construction and start-up phases on a monthly basis (the first such report to be submitted within 30 calendar days of notification of CRB approval of the issuance of the Term Sheet), comparing actual timing, cost and financing against the original budget and previous month. Each report shall explain the reason(s) for any significant variance(s) during the quarter and likely impact on the project going forward. During the operational phase of the project, the applicant shall provide financial statements, prepared in accordance with U.S. GAAP, to DOE on a quarterly basis (consisting of an income statement, balance sheet and cash flow statement), with certification by the applicant that the statements are true and correct. At all times, from receipt by DOE of an application, until the guaranteed portion of the Guaranteed Obligation is fully re-paid, the applicant will be obligated to inform DOE expeditiously (but in no event later than three (3) business days business days after discovery) of any condition having, or potentially having, a material adverse effect on either the project or the ability of the parties to carry out their obligations. DOE reserves the right to require submission of additional information as it deems necessary.

Financing Plan: Section E – Part II

1. **Sources of Funds:** List all proposed sources of funding by provider, aggregate amount and type. Include a schedule showing the expected amount and timing of disbursements.
2. **Letter(s) of Intent:** For financing other than from the Federal Financing Bank (FFB), provide an executed letter of intent from the applicant's debt and equity financing sources, which include the terms and the conditions precedent to funding. Submission of financing documents, and acceptance of terms and conditions by DOE, will be a condition precedent for closing of a loan guarantee transaction.
3. **Financial Statements:** Provide audited financial statements of applicant and parties providing applicant's financial backing, along with associated notes, for the past three years (or during the full time in operation, if less), prepared in U.S. GAAP by an independent certified public accountant firm acceptable to DOE. Include the applicant's quarterly or interim financial statements and associated notes for the current fiscal year of applicant and parties providing applicant's financial backing, together with business and financial interests of controlling or commonly controlled organizations or persons, including parent, subsidiary and other affiliated corporations or partners of the applicant, supported by a letter from the appropriate company financial official certifying their correctness.
4. **Financial Model:** Include a financial model (Microsoft Excel), with pro-forma financial statements, that takes into account the range of revenue, operating cost and credit assumptions considered. The model must include detailed assumptions for the proposed term of the guaranteed portion of the Guaranteed Obligation, including income statements, balance sheets, and cashflows and debt service coverage ratios, which will allow DOE to utilize the model for a wide range of sensitivity analysis. The model shall take into account the cost of complying with the Davis Bacon Act and all applicable Davis Bacon Act regulations as such compliance is required by Section 1705(c) of Title XVII and, if applicable, the Buy American provisions of Section 1605 of the Recovery Act.
5. **Credit History:** Include a credit history of the applicant and any party owning or controlling, by itself and/or through individuals in common or affiliated business entities, a five percent or greater interest in the project or the applicant. Provide their full names (including middle name or initial), home or business address as appropriate (including zip code), date of birth and taxpayer identification/social security number. DOE will use such information to verify the credit history of such applicant and party. DOE may also request additional documentation as part of the project evaluation process.
6. **Litigation and/or Conflicts:** Disclose any current, threatened, or pending litigation involving the applicant or, to the applicant's knowledge, any other relevant party, related to permitting, public involvement, environmental issues, construction defects, securities fraud, conflict of interest, failure to perform under a local, state or Federal contract, or other charges which may reflect on the applicant's financial position or ability to complete the project.
7. **Closing Checklist:** Provide a copy of the financial closing checklist for all sources of financing, to the extent available.

8. **Information on Other Borrowed Funds:** Provide information on the other types of expected borrowing financing the project, including type(s) of credit instrument(s) to be issued, security to be pledged for such borrowing, its priority with respect to the security pledged to the loan guarantee program instrument, and details of structuring.
9. **Collateral:** Describe and value all assets associated, or to be associated, with the project and any other assets that will serve as collateral for the Guaranteed Obligations. Valuations must be supported by independent, third-party appraisals for existing assets, and/or adequate cost substantiation for assets to be constructed for the purpose of the project, and in all cases acceptable to DOE. An appraisal of real property must be performed by a licensed or certified appraiser consistent with the Uniform Standards of Professional Appraisal Practice promulgated by the Appraisal Standards Board of the Appraisal Foundation. Provide information on the useful life of all physical assets, including a depreciation schedule (in accordance with Generally Accepted Accounting Principles in the United States (U.S. GAAP)), associated, or to be associated, with or to serve as collateral.
10. **Preliminary Credit Assessment:** If the project is proposed on a corporate financing basis, supply the Borrower's most recent corporate credit rating. If a project finance structure is proposed and the estimated total Project Costs exceed \$25 million, provide a preliminary credit assessment for the project (without giving effect to the DOE loan guarantee) from a nationally recognized rating agency where the estimated total Project Costs exceeds \$25 million. The assessment shall examine the project as structured but in the absence of a loan guarantee from DOE and shall identify any material assumptions utilized by the rating agency in its analysis. DOE will require no later than 30 days prior to closing, and as a condition of financial close, (i) a corporate credit rating reconfirmed as not having been placed under review or downgraded or, as appropriate, updated, in each case, by a nationally recognized rating agency or (ii) a final credit rating of the project, as required by Section 609.9(f) of Attachment G. For projects where the estimated total cost is \$25 million or less, in the sole discretion of the Department, DOE may require such a corporate credit rating or such an assessment as well. In those projects in which an Eligible Lender, other than the Federal Financial Bank, participates in a Guaranteed Obligation, the Eligible Lender (or the lead participant if a syndicated transaction) shall present to DOE at the time of Application its internal risk rating on the project without the benefit of a Federal guarantee and provide an equivalency of that internal risk rating to the rating scales of any of the nationally recognized rating agencies.
11. **Eligible Lender or Holder Statement:** If funds are to be provided by lenders other than FFB, provide the name of each such lender, the amount, terms and conditions of their expected financing, documentation detailing their financial strength, experience with other federal programs, and any other information deemed material to the application. If such a lender intends to sell participations in the loan, include a plan of syndication giving the lender's approach and track record with similar transactions.

If such a lender contemplates a bond financing, include the lender's plan regarding size and timing of issuance, use of any registration with the U.S. Securities and Exchange Commission, key terms and conditions, and marketing strategy. Also provide the lender's qualifications and track record in undertaking similar size financings in the capital markets. Include with the application written affirmation from an officer of the Eligible Lender or other Holder: (i) describing its current involvement with DOE's and other federal agencies loan guarantee programs; and (ii) that it is in good standing with all such programs.

Application Certifications: Section F – Part II

1. **Lobbying, Debarment and Related Certifications and Assurances:** In submitting an application for a loan guarantee under Title XVII, applicants must provide certain certifications and assurances contained in the form entitled U.S. Department of Energy Loan Guarantee Certifications and Assurances. It may be downloaded from the DOE website:

http://www.management.energy.gov/business_doe/business_forms.htm

All references made to part 609 under title 10 of the Code of Federal Regulations in the form entitled “U.S. Department of Energy Loan Guarantee Certifications and Assurances” shall be deemed to be a reference to Attachment G attached to this Solicitation.

DOE may require that applicants provide additional certifications or supporting documentation as part of the project evaluation process.

(Attachment A3)

Tab 1

Part I Submissions Review Criteria

1. Mandatory Criteria:

- a. 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.
- b. The project site is identified.
- c. Applicant shall demonstrate that private financing on standard commercial terms is not available for the project.

2. General Project Strength:

- a. Technical Approach
- b. Construction Plan
- c. Legal and Regulatory Risk
- d. Creditworthiness

3. Status:

- a. Engineering Procurement Construction (“EPC”) Agreement
- b. Long Lead Components
- c. Public Utility Commission (“PUC”) Agreements or Decisions
- d. Transmission Service Agreements or Other Offtake Agreements
- e. Operations and Maintenance Contracts

4. Schedules:

- a. Commencement of Construction
- b. Estimated In-service Date

5. Strength of:

- a. Demand for the Project
- b. Local Community Support
- c. Pro Forma Financial Statements
- d. Support of power generation from renewable energy sources

(Attachment A3)

Tab 2

Application Evaluation Factors

The following discussion summarizes the principal review and analysis criteria that DOE anticipates will be applied to evaluation of applications responsive to the Solicitation.

Financial Review

Major areas of focus in the financial review will include, among other considerations, the following.

Creditworthiness of the Project (Weighting: 50%)

DOE will consider the proposed project's capacity to provide a reasonable prospect of repayment (e.g., its economic viability with and without the DOE loan guarantee, the availability of other Federal and State incentives other than the DOE loan guarantee, its ability to generate sufficient cash flow to service the borrower's debt obligations over the life of the loan guarantee, etc.). DOE also will consider Project Sponsor capability, financial commitment to the project, financial strength, including the ability to pay 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.8 of the 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. In accordance with Section 609.7(a) of Attachment G, greater weight will be given to applications that rely upon a smaller guarantee percentage, all else being equal.

Programmatic Factors

Construction Factors (Weighting: 10%)

The Department will evaluate the project's construction plan based on the cost and the completion date certainty, giving particular consideration to 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.

Legal and Regulatory Issues (Weighting: 10%)

The Department 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 intervenor, permitting and public acceptance risks.

Additional Financial Policy Criterion

DOE will also consider, 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).

Technical Review

Consideration will be given to environmental benefit, the period of time required to place the project into service, the potential for reducing costs to consumers, and the commercial scale of the project. Consideration also will be given to creating a balance in the types of electric power transmission

systems projects that are included in DOE's loan guarantee portfolio. Major areas of focus in the technical review will include, among other considerations, the following:

Technical Relevance and Merit (Weighting: 10%)

DOE will evaluate the extent to which the project would (1) enhance the reliability needs of the national or local electric grid, and (2) advance other Title XVII (notwithstanding Section 1703) and Recovery Act objectives.

Technical Approach/Work Plan (Weighting: 10%)

Projects will be evaluated based on the clarity and technical strength of the approach to achieve the project objectives, including but not limited to (1) technical readiness for near-term commercial application, (2) the project's ability to commence construction on or before September 30, 2011 based on factors, including (i) the extent to which all required contractors have been engaged, (ii) the readiness for delivery of major components and transmission equipment, (iii) the extent to which all pre-construction design and prototype testing has been completed, (iv) the extent to which definitive interconnection agreements have been finalized and executed, (v) the creditworthiness of the buyer under any transmission service agreements or other offtake agreements, (vi) the likelihood and nature of rate base treatment, if applicable, and (vii) 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, and (3) the timeframe required to achieve results contemplated in the application. Note that DOE may require additional information to clarify, supplement or explain these descriptions.

Environmental Benefits (Weighting: 10%)

Projects will be evaluated in terms of the capacity of the project to meet the environment (including climate change) and energy goals of the nation, a State or region of the United States (e.g., goals of the State and/or region in which the project is involved or located). Potential environmental impacts of the project, mitigation plans, NEPA considerations, site permits, site preparation and construction and commissioning of the facility will be considered.

Additional Technical Policy Criteria

DOE will also consider geographical diversity and the extent to which a project supports the generation of power from renewable energy sources, in each case, as a non-weighted technical criterion. More specifically, DOE will consider whether the project provides for geographical diversity, as well as contributes to a balance across differing technical areas.

(Attachment A3)
Tab 3

Desired Outcomes

Desired Outcomes

1. Reasonable Prospect of Repayment and Sufficiency to Carry Out the Project
2. Creation or Retention of Jobs
3. Commencement of Construction by September 30, 2011
4. Projects that:
 - a. Address the Reliability Needs of the National or Local Electric Grid
 - b. Provide the best use of a DOE loan guarantee in support of the project
 - c. Achieve environmental (including climate change) and energy goals of the nation, State and/or region in which the project is located or involved
 - d. Support power generation from renewable energy sources

Notes:

Reasonable Prospect of Repayment and Sufficiency of Financing to Carry Out Project

Applicants are reminded that the loan guarantee program is not a federal procurement (e.g., government contracts) or assistance program (e.g., grants and cooperative agreements) and that DOE is mandated by Title XVII to ensure that projects financed have a reasonable prospect of repayment 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 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 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 the applicable portions of Title XVII, including Section 1705, and of the Recovery Act, the Solicitation and Attachment G. 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 (excluding Section 1703) and of the Recovery Act, are encouraged.

Attachment B

National Environmental Policy Act (NEPA) Guidance

NEPA Guidance Attachment B

Overview

The National Environmental Policy Act (“NEPA”) requires Federal agencies to consider the potential environmental impacts of their proposed actions. To the extent compatible with DOE’s NEPA requirements, DOE will consider environmental information and assessment of these projects contained in any Environmental Report prepared for another federal agency.

Because loan guarantees are expected to be granted for commercial-scale projects, categorical exclusions under NEPA are not expected to apply. If DOE invites a Project Sponsor to negotiate after the preliminary technical, financial and environmental review is complete, and if an Environmental Assessment (“EA”) or Environmental Impact Statement (“EIS”) is not otherwise available from a federal agency with respect to the given project, DOE will evaluate each project to determine the appropriate level of NEPA review required (i.e., whether an EA or EIS should be prepared). If appropriate, DOE would adopt the EIS of the federal agency and supplement such EIS, as necessary, to assure compliance of the project under DOE’s NEPA regulations.

Selection of a NEPA Contractor

Should an EA or EIS be necessary DOE may choose to use a third party contract arrangement. Under a third party contract arrangement the applicant will be required to pay the contractor cost of NEPA compliance. The environmental firm preparing the EA or EIS will work exclusively under the direction of DOE. DOE will be solely responsible for the contents of the EA or EIS. The applicant may propose an environmental firm to DOE, but DOE will make the ultimate selection. Information on firms that hold DOE-wide NEPA indefinite delivery/indefinite quantity contracts is available on the DOE NEPA website at <http://www.eh.doe.gov/nepa>, under “DOE-wide NEPA Contracting.”

The applicant will hire a firm to prepare the EA or EIS once a third-party agreement or memorandum-of-understanding (“MOU”) has been signed by DOE, the environmental firm, and the applicant. The firm DOE selects must sign a conflict of interest form indicating that it has no financial or other interest in the outcome of the project. DOE will not be involved in the fee and contractual negotiations between the applicant and the NEPA contractor.

NEPA Process and Preparation of an EIS

The following outlines the NEPA process at DOE following the decision to invite an applicant to negotiate. The first step involves determining the appropriate level of NEPA review for each project.

If it is determined that an EIS prepared by DOE would be required (e.g., EIS from a federal agency is not available or not appropriate for adoption), DOE must publish in the Federal Register a Notice of Intent (“NOI”) to prepare an EIS. The NOI states the need for action, opens a minimum 30-day scoping process, and provides preliminary information on the proposed EIS scope, including the alternative actions to be evaluated and the kinds of potential environmental impacts to be analyzed in the EIS. During the scoping period, DOE will hold one or more public meetings in the vicinity of the proposed project site.

During the public scoping process DOE requests comments from the public on the scope of the EIS in regards to what alternatives should be evaluated and what potential environmental impacts should be analyzed. DOE then considers scoping comments and prepares a draft EIS (“DEIS”), which will, at a minimum, meet the requirements in the Council on Environmental Quality (“CEQ”)’s NEPA regulations at 40 CFR Parts 1500-1508 and DOE NEPA regulations at 10 CFR Part 1021.

The DEIS is distributed to Members of Congress, other Federal Agencies, Indian Tribes, state and local governments and organizations and individuals known to be potentially affected or have an interest in the project and is filed with the EPA. EPA then publishes a Notice of Availability (“NOA”) in the Federal Register announcing the availability of the DEIS beginning a minimum 45-day public comment period. DOE may publish its own NOA describing how the public may comment, including the location and schedule of public hearings on the DEIS.

After receiving comments, a final EIS (“FEIS”) is prepared that includes public comments on the draft and DOE responses describing how the comments were addressed in the EIS. The same distribution process as the DEIS follows, including a filing with EPA. EPA issues a NOA in the Federal Register, and DOE can issue a Record of Decision (“ROD”) no sooner than 30 days after publication of the NOA. The ROD describes the agency’s decision regarding the proposed action and is published in the Federal Register.

Information to be Submitted to DOE in the Application

Under 10 CFR Part 609.6(b)(23) of Attachment G, an application must include a report containing an analysis of the potential environmental impacts of the project that will enable DOE to assess whether the project will comply with all applicable environmental requirements and will enable DOE to complete any necessary reviews under NEPA. Accordingly, each applicant should submit the following information to assist DOE in determining the appropriate level of NEPA review (EA or EIS), and in preparing the EA or EIS.

1. Facilities – describe and, as appropriate, identify and quantify:
 - new facilities to be constructed, existing facilities to be modified, and materials and equipment to be used in construction;
 - size of the new and modified facilities and of the total project site (including support facilities needed, such as parking lots and treatment facilities, and associated land uses, such as agricultural production areas);
 - extent of necessary site clearing and excavation;
 - associated construction of transport infrastructure (e.g., access roads, railroad links, docks, pipelines, electrical transmission facilities) or waste treatment facilities;
 - air emissions, water effluents, use of borrow areas, and solid or other liquid waste that would result from construction (include quantitative estimates); and
 - any existing facility that is part of the proposed project.

2. Project Location – describe and, as appropriate, identify, quantify, or provide a map:
 - project site and location;
 - ownership of or jurisdiction over the land by Federal, state, regional, or local agency;
 - existing transportation corridors and infrastructure;

- nearby land use and features (e.g., residences, industrial facilities, parks, surface water, soils, geology, hydrology);
- areas with special designation both on the project location and nearby (e.g., National Forests, National Historic Properties, wetlands, floodplains, critical habitat for designated threatened or endangered species);
- ambient air quality; and
- near-by populations (including minority and low-income).

3. Proposed Project Construction and Operation –

(a) describe and, as appropriate, identify and quantify, project operations, including:

- material resources to be used, including how they would be transported;
- source(s) and rates of water consumption and adequacy of water supply sources;
- materials produced, including how they would be transported;
- onsite and offsite releases (air emissions, including carbon dioxide, odors; water effluents; and solid and other liquid waste streams), including rate and duration of such substances as criteria pollutants, greenhouse gases, and hazardous substances;
- onsite and offsite waste treatment and disposal;
- number of on-site workers; and
- any mitigating measure(s) to be used or considered to be used to reduce environmental impacts.

(b) present an overall schematic process diagram that identifies all inputs and outputs; and

(c) identify a spectrum of scenarios that could result from process upsets, human error, and accidents/intentional destructive acts.

4. Project progression – provide information on:

- construction milestones;
- expected operating cycle and any aspects of the project that could result in impacts that vary over time (e.g., with time of day or season of the year); and
- expected project lifetime, including expansion of initial project at the proposed site and to other sites.

5. Status of other environmental and regulatory reviews, including permitting

- if the proposed project would require review or permitting by another Federal agency or by a state, regional, or local agency, identify the required reviews and permits and tell the status of each; and
- if an environmental impact review (e.g. NEPA documentation, agency consultations) has been prepared (or is in the process of being prepared or is anticipated) for the proposed project (by another Federal agency or a state agency), provide a summary or copy of the review.

6. Alternative sites or operating parameters:

- identify any other routes considered for the proposed project, and state whether they remain options or give the reasons for not proposing them;
- identify any alternative operating parameters for the proposed project (e.g., materials to be used, above or below ground configurations, right of way management practices) and state whether they remain options or give the reasons for not proposing them.

7. Post-operational requirements – to the extent possible:

- describe any reasonably foreseeable future requirements, including site close-out and site restoration; and
- describe any related decontamination and decommissioning activities, including associated waste streams.

8. Other actions in the project area:

- describe existing or possible future facilities and activities that may impact the same resources as the proposed project in the same geographic area(s), including those by other companies.

DOE recommends that applicants also consider NEPA references on DOE's website at http://www.gc.energy.gov/NEPA/selected_guidance_tools.htm -- "Recommendations for the Preparation of Environmental Assessments and Environmental Impact Statements" and the "Environmental Assessment Checklist" and "Environmental Impact Statement Checklist." Applicants may also want to refer to existing EA's and EIS's published on DOE's website to understand the level of analysis that DOE will need to carry out in its NEPA review.

Attachment C

Schedule of Fees

**UNITED STATES
DEPARTMENT OF ENERGY**

**FEE SCHEDULE FOR TRANSMISSION INFRASTRUCTURE INVESTMENT PROJECTS
Section 1705 Loan Guarantee Program**

Note: All fees appearing on this schedule are non-refundable.

LOAN GUARANTEE FEE STRUCTURE:

<u>Type of Fee</u>	<u>Fee Amount</u>
I. Application (First Fee)	\$800,000, payable as follows: 1. with Part I submission: \$200,000 (25%), and 2. with Part II submission: \$600,000 (75%)
II. Facility (Second Fee)	1/2 of 1.0% of guaranteed portion of Guaranteed Obligation
III. Maintenance (Third Fee)	Expected to be in the range of \$200,000 to \$400,000 per year, the amount and payment due dates to be specified in the Loan Guarantee Agreement as described in Section VIII of this Solicitation

Fee payments will only be credited by wire transfers to the following address:

**U.S. Treasury Department
ABA No. 0210-3000-4 TREASNYC/CTR/BNF=D89000001
OBI=LGPO Solicitation Transmission Infrastructure Investment Projects Application Fee for
(applicant name)**

Once the initial portion (25%) of the application fee received with respect to Part I submission, DOE will contact the applicant directly to obtain further required information.

Attachment D

Loan Guarantee Application Form

All references made to part 609 under title 10 of the Code of Federal Regulations in the attached Loan Guarantee Application Form shall be deemed to be a reference to Attachment G attached to this Solicitation. Similarly, all references made to Title XVII of the Energy Policy Act of 2005, Public Law 109-58 shall be deemed to be a reference to Title XVII, as amended, including by Section 406 of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5.

**U.S. Department of Energy Loan Guarantee for
 Transmission Infrastructure Investment Projects**

This form is for use by Applicants seeking a U.S. Department of Energy Loan Guarantee pursuant to Title XVII of the Energy Policy Act of 2005, Public Law 109-58 (22 USC 16511, et seq.) and is governed by 10 CFR Part 609. (Social Security numbers are requested for purposes of verifying whether the Applicant has any tax delinquent accounts with the IRS as required by OMB Policy Circular A-129.) After completing this form, please print two copies and send to the address below. It is highly recommended that all mail be sent via Express Mail. Full Applications should be uploaded using Fed Connect at www.fedconnect.net. For more information on the program, please visit our website at <http://www.lgprogram.energy.gov>.

Mail All Paper Copies to:
 Director
 U.S. DOE Loan Guarantee Program Office
 1000 Independence Ave, SW
 Washington, DC 20585-0121

**If you need assistance or have any
 questions please contact the Loan
 Guarantee Program Office at (202) 586-
 8336 or email us at
lgprogram@hq.doe.gov.**

In reference to DOE Solicitation No.

Invitation No. _____

GENERAL INFORMATION

Organization Name	Federal Tax ID or Social Security No.

Contact Last Name	First Name	Position/Title

Phone Number	Fax Number

Address

City	State	9 Digit Zip Code

Email	DUNS Number	NAIC Number

Project Location – City	State	9 Digit Zip Code

PROJECT SPONSORS (ASSET HOLDERS) WITH EQUITY OF 5 PERCENT OR MORE

Organization Name	Federal Tax ID or Social Security No.

Contact Last Name	First Name	Position/Title

Phone Number	Fax Number

Address

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City	State	9 Digit Zip Code
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Organization Name	Federal Tax ID or Social Security No.
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Contact Last Name	First Name	Position/Title
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Phone Number	Fax Number
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Address

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City	State	9 Digit Zip Code
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Organization Name	Federal Tax ID or Social Security No.
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Contact Last Name	First Name	Position/Title
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Phone Number	Fax Number
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Address

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City	State	9 Digit Zip Code
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Organization Name	Federal Tax ID or Social Security No.
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Contact Last Name	First Name	Position/Title
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Phone Number	Fax Number
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Address

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City	State	9 Digit Zip Code
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Organization Name	Federal Tax ID or Social Security No.
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Contact Last Name	First Name	Position/Title
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Phone Number	Fax Number
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Address		
City	State	9 Digit Zip Code

SUMMARY OF LOAN GUARANTEE REQUEST

Requested Period of Guarantee	yrs	Total Project Costs*	\$
Equity*	\$	Proposed Guaranteed Amount*	\$
Debt*	\$	Requested Loan Guarantee to Debt Instrument	%
Debt to Equity Ratio	:	Requested Loan Guarantee to Total Project Costs	%

* Please indicate dollars in millions

CATEGORY OF PROJECT

Category	Description	Check Box
1	Renewable Energy Systems	
2	Advanced Fossil Energy Technology (including coal gasification meeting the criteria in paragraph 1703 (d) of EPAct 2005	
3	Hydrogen fuel cell technology for residential, industrial or transportation applications	
4	Advanced nuclear energy facilities	
5	Carbon capture and sequestration practices and technologies, including agricultural and forestry practices that store and sequester carbon	
6	Efficient electrical generation, transmission and distribution technologies	
7	Efficient end-use energy technologies	
8	Production facilities for fuel efficient vehicles including hybrid and advanced diesel vehicles	
9	Pollution control equipment	
10	Refineries, meaning facilities at which crude oil is refined into gasoline	

RESTRICTIONS ON DISCLOSURE AND USE OF INFORMATION

Title XVII of the Energy Policy Act of 2005 authorizes the collection of this information. The primary use of this information is by the Loan Guarantee Program Office of the Department of Energy in its review of applications for loan guarantees under Title XVII. Additional disclosures of this information may be made as required by law. Where the information provided is a social security number, the provision of the information is voluntary but failure to disclose may result in disapproval of the application.

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 hereby discloses that (fill in the blank below in this Application Form with the specific Application Sections containing proprietary data):

“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 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. Include the following legend on the first or cover page of each document or electronic file submitted 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. Include 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.”

BURDEN DISCLOSURE STATEMENT

This data is being collected to support applications for loan guarantees from the Department of Energy under Title XVII of the Energy Policy Act of 2005 (22 USC 16511, *et seq.*). The data you supply will be used for the review of business and credit risks relating to projects which qualify for loan guarantees under Title XVII.

Public reporting burden for this collection of information is estimated to average 10.36 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of the Chief Information Officer, Records Management Division, IM-23, U.S. Department of Energy, 1000 Independence Ave SW, Washington, DC, 20585-1290; and to the Office of Management and Budget, OIRA, Washington, DC 20503.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB control number.

Submission of this data is required to obtain a guarantee of the repayment of principal and interest on loans relating to projects that qualify for such guarantees under Title XVII of the Energy Policy Act of 2005 (22 USC 16511, *et seq.*).

CERTIFICATION

The undersigned certifies that the data and information submitted and the representations made in this Application and any attachments to this Application are true and correct, to the best of the Applicant's knowledge and belief after due diligence, and that the Applicant has not omitted any material facts.

The undersigned further certifies to having full authority to bind the Applicant.

Applicant (Organization Name)

--

Name of Applicant's Authorized Officer (*will fulfill on-line certification*) Title

--	--

Signature of authorized officer (*for paper copy only*)

Date

--	--

Attachment E

Letter of Commitment

(Attachment E)

Director, DOE LGPO

This is to confirm that it is our intent to seek a Loan Guarantee pursuant to your solicitation serial no. [INSERT NO.], dated July 29, 2009. This confirms we have met all mandatory requirements as specified in the Solicitation including Attachments A1 to A3 of the Solicitation. Our Part I Application fee was wired as per your instructions on xx/xx/xx.

We intend to submit our complete Part II submission on the due date for the [first, second, or third and final] round of Part II reviews as set forth in Section IV.6 of the Solicitation. Based on the Application process as delineated in the Solicitation, we intend to be prepared to close with respect to the financing on or about xx/xx/xx.

Should we decide to withdraw from consideration for a loan guarantee at any time prior to or after any of the due dates for the three rounds of Part II reviews as set forth in Section IV.6 of the Solicitation, we will notify DOE in writing of that decision.

Attachment F

Communication Instructions

Responses to this Solicitation

1. FEDCONNECT

Potential applicants that receive this solicitation through sources other than FedConnect should immediately register with FedConnect .

In order to register you will need:

- Your company's DUNS (including plus 4 digit extension if applicable).

(If you don't know your company's DUNS or if your company does not have a DUNS you can search for it or request one at <http://fedgov.dnb.com/webform/displayHomePage.do>)

- A Federal Contractor Central Registration ("CCR") account.

(If your company is not currently registered with CCR, please register at www.ccr.gov before continuing with your FedConnect registration.) In completing the CCR, utilize the "Grants" format unless you have reason to use any of the other formats.

- Other details on registering at FedConnect are available at the website – www.fedconnect.net

VERY IMPORTANT: Applicants are highly encouraged to obtain such numbers and complete such registrations as soon as possible and should allow at least 21 days to complete these processes. Contact the FedConnect support team at support@fedconnect.net to verify successful registration. If you have questions regarding the operation of FedConnect, please contact the FedConnect support team at support@fedconnect.net.

Important subsequent information may be posted concerning this solicitation that will only be available at FedConnect and/or the Program Website.

Applicants that intend to respond to this solicitation should pay careful attention to the instructions contained in Section V.3 of the Solicitation as well as the instructions in Attachment D. The form set forth in Attachment D, OMB No 1910-5134, must be completed, signed and submitted along with the Part I submission, no later than 11:59pm ET on September 14, 2009. Such form must be submitted both as hard copies (2) and electronically through FedConnect.

Applicants should provide a "short name" or other identifier that will allow for easy identification of the company or the project.

If an applicant needs to make substantive changes or additions to its application prior to the application submission deadline, the applicant must clearly identify and date the new version of the submission in its file name and upload it through the FedConnect website.

2. ALTERNATIVE COMMUNICATIONS

Prior to the Part I submission deadline of September 14, 2009, potential applicants may seek clarification only in respect of registering with, or the operation of FedConnect. Accordingly, the preferred method of communication with DOE is through FedConnect. However, alternate communication channels in respect of registration with, or the operation of, FedConnect, include the following, and CD-ROMs containing the applicant's Part I and Part II submissions must be sent by express mail to the mailing address listed below and arrive at DOE no later than September 14, 2009 for Part I's and no later than two (2) business days after the applicable due date by which the applicant submitted its Part II by FedConnect:

- Regular or express mail, including private carriers at

Director
U.S. DOE Loan Guarantee Program Office CF 1.3
1000 Independence Ave., SW
Washington, DC 20585-0121

- E-mail at:

lgprogram@hq.doe.gov

subject line must include "RECMPLX TRANS Solicitation Question"

- Telephone at: 202-586-8336

Additional information on the loan guarantee program may also be available at www.lgprogram.energy.gov.

3. SINGLE POINT OF CONTACT

Upon receipt of a completed Part II application submission and a decision by DOE to begin negotiations with an applicant, DOE will assign a single point of contact for individual questions and/or discussions on matters relevant to the application. This single point of contact will arrange for follow-up discussions. DOE may request that each submission to DOE be followed with an oral presentation to discuss and clarify the submission and agree on next steps. A teleconference instead of face-to-face meeting can suffice by mutual agreement.

Attachment G

**Certain Applicable Provisions for
Eligible Projects Authorized Under
Section 1705 OF Title XVII**

§ 609.2 Definitions.

Act means Title XVII of the Energy Policy Act of 2005 (42 U.S.C. 16511-16514), as amended, including by the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5.

Administrative Cost of Issuing a Loan Guarantee means the total of all administrative expenses that DOE incurs during:

(1) The evaluation of []an Application for a loan guarantee;

(2) The offering of a Term Sheet, executing the Conditional Commitment, negotiation, and closing of a Loan Guarantee Agreement; and

(3) The servicing and monitoring of a Loan Guarantee Agreement, including during the construction, startup, commissioning, shakedown, and operational phases of an Eligible Project.

Applicant means any person, firm, corporation, company, partnership, association, society, trust, joint venture, joint stock company, or other business entity or governmental non-Federal entity that has submitted an Application to DOE and has the authority to enter into a Loan Guarantee Agreement with DOE under the Act.

Application has the meaning set forth in the Solicitation.

Borrower means any Applicant who enters into a Loan Guarantee Agreement with DOE and issues Guaranteed Obligations.

Commercial Technology means a technology in general use in any commercial marketplace at the time the Term Sheet is issued by DOE. A technology is in general use if it has been installed in and is being used anywhere in three or more commercial projects in the same or substantially similar general application as in the proposed project, and has been in operation in each such commercial

project for a period of at least two years. The two-year period shall be measured, for each project, starting on the in service date of the project or facility employing that particular technology.

Conditional Commitment means a Term Sheet offered by DOE and accepted by the Applicant, with the understanding of the parties that if the Applicant thereafter satisfies all specified and precedent funding obligations and all other contractual, statutory and regulatory requirements, or other requirements, DOE and the Applicant will execute a Loan Guarantee Agreement: Provided that the Secretary may terminate a Conditional Commitment for any reason at any time prior to the execution of the Loan Guarantee Agreement; and Provided further that the Secretary may not delegate this authority to terminate a Conditional Commitment.

Contracting Officer means the Secretary of Energy or a DOE official authorized by the Secretary to enter into, administer and/or terminate DOE Loan Guarantee Agreements and related contracts on behalf of DOE.

Credit Subsidy Cost has the same meaning as “cost of a loan guarantee” in section 502(5)(C) of the Federal Credit Reform Act of 1990 (2 U.S.C. 661a(5)(C)), which is the net present value, at the time the Loan Guarantee Agreement is executed, of the following estimated cash flows, discounted to the point of disbursement:

(1) Payments by the Government to cover defaults and delinquencies, interest subsidies, or other payments; less

(2) Payments to the Government including origination and other fees, penalties, and recoveries; including the effects of changes in loan or debt terms resulting from the exercise by the Borrower, Eligible Lender or other Holder of an option included in the Loan Guarantee Agreement.

DOE means the United States Department of Energy.

Eligible Lender means:

(1) Any person or legal entity formed for the purpose of, or engaged in the business of, lending money, including, but not limited to, commercial banks, savings and loan institutions, insurance companies, factoring companies, investment banks, institutional investors, venture capital investment companies, trusts, or other entities designated as trustees or agents acting on behalf of bondholders or other lenders; and

(2) Any person or legal entity that meets the requirements of § 609.11 of this Attachment, as determined by DOE; or

(3) The Federal Financing Bank.

Eligible Project means a project located in the United States and which meets all the requirements set forth in Section II.A of the Solicitation.

Equity means cash contributed by the Borrowers and other principals. Equity does not include proceeds from the non-guaranteed portion of Title XVII loans, proceeds from any other non-guaranteed loans, or the value of any form of government assistance or support.

Federal Financing Bank means an instrumentality of the United States government created by the Federal Financing Bank Act of 1973 (12 U.S.C. 2281 et seq). The Bank is under the general supervision of the Secretary of the Treasury.

Guaranteed Obligation means any loan or other debt obligation of the Borrower for an Eligible Project for which DOE guarantees all or any part of the payment of principal and interest under a Loan Guarantee Agreement entered into pursuant to the Act.

Holder means any person or legal entity that owns a Guaranteed Obligation or has lawfully succeeded in due course to all or part of the rights, title, and interest in a Guaranteed Obligation, including any nominee or trustee empowered to act for the Holder or Holders.

Loan Agreement means a written agreement between a Borrower and an Eligible Lender or other Holder containing the terms and conditions under which the Eligible Lender or other Holder will make loans to the Borrower to start and complete an Eligible Project.

Loan Guarantee Agreement means a written agreement that, when entered into by DOE and a Borrower, an Eligible Lender or other Holder, pursuant to the Act, establishes the obligation of DOE to guarantee the payment of all or a portion of the principal and interest on specified Guaranteed Obligations of a Borrower to Eligible Lenders or other Holders subject to the terms and conditions specified in the Loan Guarantee Agreement.

OMB means the Office of Management and Budget in the Executive Office of the President.

Project Costs means those costs, including escalation and contingencies, that are to be expended or accrued by Borrower and are necessary, reasonable, customary and directly related to the design, engineering, financing, construction, startup, commissioning and shakedown of an Eligible Project, as specified in § 609.12 of this Attachment. Project costs do not include costs for the items set forth in § 609.12(c) of this Attachment.

Project Sponsor means any person, firm, corporation, company, partnership, association, society, trust, joint venture, joint stock company or other business entity that assumes substantial responsibility for the development, financing, and structuring of a project eligible for a loan guarantee and, if not the Applicant, owns or controls, by itself and/or through individuals in common or affiliated business entities, a five percent or greater interest in the proposed Eligible Project, or the Applicant.

Secretary means the Secretary of Energy or a duly authorized designee or successor in interest.

Solicitation means the solicitation issued by DOE on July 29, 2009 for Applications for electric power transmission infrastructure investment projects as more fully described in the Solicitation.

Term Sheet means an offering document issued by DOE that specifies the detailed terms and conditions under which DOE may enter into a Conditional Commitment with the Applicant. A Term Sheet imposes no obligation on the Secretary to enter into a Conditional Commitment.

United States means the several states, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa or any territory or possession of the United States of America.

§ 609.3 [Intentionally Omitted].

§ 609.4 [Intentionally Omitted].

§ 609.5 [Intentionally Omitted].

§ 609.6 Submission of Applications.

(a) An Applicant submitting an Application must meet all requirements and provide all information specified in the Solicitation and this Attachment.

(b) An Application must include, at a minimum, the following information and materials:

(1) A completed Application form signed by an individual with full authority to bind the Applicant and the Project Sponsors;

(2) Payment of the Application filing fee (First Fee) for the Pre-Application, if any, and Application phase;

(3) [Intentionally omitted];

(4) [Intentionally omitted];

(5) A description of the nature and scope of the proposed project, including:

(i) Key milestones;

(ii) Location of the project;

(iii) Identification and commercial feasibility of the [] technology(ies) to be employed in the project; and

(iv) How the Applicant intends to employ such technology(ies) in the project.

(6) A detailed explanation of how the proposed project qualifies as an Eligible Project;

(7) A detailed estimate of the total Project Costs together with a description of the methodology and assumptions used;

(8) A detailed description of the engineering and design contractor(s), construction contractor(s), equipment supplier(s), and construction schedules for the project, including major activity and cost milestones as well as the performance guarantees, performance bonds, liquidated damages provisions, and equipment warranties to be provided;

(9) A detailed description of the operations and maintenance provider(s), the plant operating plan, estimated staffing requirements, parts inventory, major maintenance schedule, estimated annual downtime, and performance guarantees and related liquidated damage provisions, if any;

(10) A description of the management plan of operations to be employed in carrying out the project, and information concerning the management experience of each officer or key person associated with the project;

(11) A detailed description of the project decommissioning, deconstruction, and disposal plan, and the anticipated costs associated therewith;

(12) An analysis of the market for any product to be produced by the project, including relevant economics justifying the analysis, and copies of any contractual agreements for the sale of these products or assurance of the revenues to be generated from sale of these products;

(13) A detailed description of the overall financial plan for the proposed project, including all sources and uses of funding, equity and debt, and the liability of parties associated with the project over the term of the Loan Guarantee Agreement;

(14) A copy of all material agreements, whether entered into or proposed, relevant to the investment, design, engineering, financing, construction, startup commissioning, shakedown, operations and maintenance of the project;

(15) A copy of the financial closing checklist for the equity and debt to the extent available;

(16) Applicant's business plan on which the project is based and Applicant's financial model presenting project pro forma statements for the proposed term of the Guaranteed Obligations including income statements, balance sheets, and cash flows. All such information and data must include assumptions made in their preparation and the range of revenue, operating cost, and credit assumptions considered;

(17) Financial statements for the past three years, or less if the Applicant has been in operation less than three years, that have been audited by an independent certified public accountant, including all associated notes, as well as interim financial statements and notes for the current fiscal year, of Applicant and parties providing Applicant's financial backing, together with business and financial interests of controlling or commonly controlled organizations or persons, including parent, subsidiary and other affiliated corporations or partners of the Applicant;

(18) A copy of all legal opinions, and other material reports, analyses, and reviews related to the project;

(19) The applicant's engineering report prepared by an engineer with experience in the industry and familiarity with similar projects. The report should address: the project's siting and permitting, engineering and design, contractual requirements, environmental compliance, testing and commissioning and operations and maintenance;

(20) Credit history of the Applicant and, if appropriate, any party who owns or controls, by itself and/or through individuals in common or affiliated business entities, a five percent or greater interest in the project or the Applicant;

(21) A preliminary credit assessment for the project without a loan guarantee from a nationally recognized rating agency for projects where the estimated total Project Costs exceed \$25 million. For projects where the total estimated Project Costs are \$25 million or less and where conditions justify, in the sole discretion of the Secretary, DOE may require such an assessment;

(22) A list showing the status of and estimated completion date of Applicant's required project-related applications or approvals for Federal, state, and local permits and authorizations to site, construct, and operate the project;

(23) A report containing an analysis of the potential environmental impacts of the project that will enable DOE to assess whether the project will comply with all applicable environmental requirements, and that will enable DOE to undertake and complete any necessary reviews under the National Environmental Policy Act of 1969;

(24) A listing and description of assets associated, or to be associated, with the project and any other asset that will serve as collateral for the Guaranteed Obligations, including appropriate data as to the value of the assets and the useful life of any physical assets. With respect to real property assets listed, an appraisal that is consistent with the "Uniform Standards of Professional Appraisal Practice," promulgated by the Appraisal Standards Board of the Appraisal Foundation, and performed by licensed or certified appraisers, is required;

(25) An analysis demonstrating that, at the time of the Application, there is a reasonable prospect that Borrower will be able to repay the Guaranteed Obligations (including interest) according to their terms, and a complete description of the operational and financial assumptions and methodologies on which this demonstration is based;

(26) Written affirmation from an officer of the Eligible Lender or other Holder confirming that it is in good standing with DOE's and other Federal agencies' loan guarantee programs;

(27) A list of all of the requirements contained in this Attachment and the Solicitation and where in the Application these requirements are addressed;

(28) A statement from the Applicant that it believes that there is “reasonable prospect” that the Guaranteed Obligations will be fully paid from project revenue; and

(29) Any other information requested in the invitation to submit an Application or requests from DOE in order to clarify an Application;

(c) DOE will not consider any Application complete unless the Applicant has paid the First Fee and the Application is signed by the appropriate entity or entities with the authority to bind the Applicant to the commitments and representations made in the Application.

§ 609.7 Programmatic, Technical and Financial Evaluation of Applications.

(a) In reviewing completed Applications, and in prioritizing and selecting those to whom a Term Sheet should be offered, DOE will apply the criteria set forth in the Act, the Solicitation, and this Attachment. Applications will be considered in a competitive process, i.e. each Application will be evaluated against other Applications responsive to the Solicitation. Greater weight will be given to applications that rely upon a smaller guarantee percentage, all else being equal. Concurrent with its review process, DOE will consult with the Secretary of the Treasury regarding the terms and conditions of the potential loan guarantee. Applications will be denied if:

(1) The project will be built or operated outside the United States;

(2) The project is not ready to be employed commercially in the United States, cannot yield a commercially viable product or service in the use proposed in the project;

(3) The entity or person issuing the loan or other debt obligations subject to the loan guarantee is not an Eligible Lender or other Holder, as defined in § 609.11 of this Attachment;

(4) The project is for demonstration, research, or development.

(5) [Intentionally omitted]; or

(6) The Applicant will not provide an equity contribution.

(b) In evaluating Applications, DOE will consider the following factors:

(1) [Intentionally omitted];

(2) To what extent the [] technology to be employed in the project, as compared to Commercial Technology in general use in the United States, is ready to be employed commercially in the United States, yields a commercial viable project or service in the use proposed in the project;

(3) Intentionally omitted;

(4) The extent to which the requested amount of the loan guarantee, and requested amount of Guaranteed Obligations are reasonable relative to the nature and scope of the project;

(5) The total amount and nature of the Eligible Project Costs and the extent to which Project Costs are funded by Guaranteed Obligations;

(6) Intentionally omitted;

(7) The amount of equity commitment to the project by the Applicant and other principals involved in the project;

(8) Whether there is sufficient evidence that the Applicant will diligently pursue the project, including initiating and completing the project in a timely manner;

(9) Whether and to what extent the Applicant will rely upon other Federal and non-Federal governmental assistance such as grants, tax credits, or other loan guarantees to support the financing, construction, and operation of the project and how such assistance will impact the project;

(10) The feasibility of the project and likelihood that the project will produce sufficient revenues to service the project's debt obligations over the life of the loan guarantee and assure timely repayment of Guaranteed Obligations;

(11) The levels of safeguards provided to the Federal government in the event of default through collateral, warranties, and other assurance of repayment described in the Application;

(12) The Applicant's capacity and expertise to successfully operate the project, based on factors such as financial soundness, management organization, and the nature and extent of corporate and personal experience;

(13) The ability of the applicant to ensure that the project will comply with all applicable laws and regulations, including all applicable environmental statutes and regulations;

(14) The levels of market, regulatory, legal, financial, technological, and other risks associated with the project and their appropriateness for a loan guarantee provided by DOE;

(15) Whether the Application contains sufficient information, including a detailed description of the nature and scope of the project and the nature, scope, and risk coverage of the loan guarantee sought to enable DOE to perform a thorough assessment of the project; and

(16) Such other criteria that DOE deems relevant in evaluating the merits of an Application.

(c) [Intentionally Omitted].

(d) If DOE determines that a project may be suitable for a loan guarantee, DOE will notify the Applicant and Eligible Lender or other Holder in writing and provide them with a Term Sheet. If DOE reviews an Application and decides not to proceed further with the issuance of a Term Sheet, DOE will inform the Applicant in writing of the reason(s) for denial.

§ 609.8 Term Sheets and Conditional Commitments.

(a) DOE , after review and evaluation of the Application, additional information requested and received by DOE, potentially including a preliminary credit rating or credit assessment, and information obtained as the result of meeting with the Applicant and the Eligible Lender or other Holder, may offer to an Applicant and the Eligible Lender or other Holder detailed terms and

conditions that must be met, including terms and conditions that must be met by the Applicant and the Eligible Lender or other Holder.

(b) The terms and conditions required by DOE will be expressed in a written Term Sheet signed by a Contracting Officer and addressed to the Applicant and the Eligible Lender or other Holder, where appropriate. The Term Sheet will request that the Project Sponsor and the Eligible Lender or other Holder express agreement with the terms and conditions contained in the Term Sheet by signing the Term Sheet in the designated place. Each person signing the Term Sheet must be a duly authorized official or officer of the Applicant and Eligible Lender or other Holder. The Term Sheet will include an expiration date on which the terms offered will expire unless the Contracting Officer agrees in writing to extend the expiration date.

(c) The Applicant and/or the Eligible Lender or other Holder may respond to the Term Sheet offer in writing or may request discussions or meetings on the terms and conditions contained in the Term Sheet, including requests for clarifications or revisions. When DOE, the Applicant, and the Eligible Lender or other Holder agree on all of the final terms and conditions and all parties sign the Term Sheet, the Term Sheet becomes a Conditional Commitment. When and if all of the terms and conditions specified in the Conditional Commitment have been met, DOE and the Applicant may enter into a Loan Guarantee Agreement.

(d) DOE's obligations under each Conditional Commitment are conditional upon statutory authority having been provided in advance of the execution of the Loan Guarantee Agreement sufficient under FCRA and Title XVII for DOE to execute the Loan Guarantee Agreement, and either an appropriation has been made or a borrower has paid into the Treasury sufficient funds to cover the full Credit Subsidy Cost for the loan guarantee that is the subject of the Conditional Commitment.

(e) The Applicant is required to pay fees to DOE to cover the Administrative Cost of Issuing a Loan Guarantee for the period of the Term Sheet through the closing of the Loan Guarantee Agreement (Second Fee).

§ 609.9 Closing On the Loan Guarantee Agreement.

(a) Subsequent to entering into a Conditional Commitment with an Applicant, DOE, after consultation with the Applicant, will set a closing date for execution of Loan Guarantee Agreement.

(b) By the closing date, the Applicant and the Eligible Lender or other Holder must have satisfied all of the detailed terms and conditions contained in the Conditional Commitment and other related documents and all other contractual, statutory, and regulatory requirements. If the Applicant and the Eligible Lender or other Holder has not satisfied all such terms and conditions by the closing date, the Secretary may, in his/her sole discretion, set a new closing date or terminate the Conditional Commitment.

(c) In order to enter into a Loan Guarantee Agreement at closing:

- (1) DOE must have received authority in an appropriations act for the loan guarantee; and
- (2) All other applicable statutory, regulatory, or other requirements must be fulfilled.

(d) Prior to, or on, the closing date, DOE will ensure that:

(1) Pursuant to section 1702(b) of the Act, DOE has received payment of the Credit Subsidy Cost of the loan guarantee, as defined in § 609.2 of this Attachment from either (but not from a combination) of the following:

- (i) A Congressional appropriation of funds; or

(ii) A payment from the Borrower.

(2) Pursuant to section 1702(h) of the Act, DOE has received from the Borrower the First and Second Fees and, if applicable, the Third fee, or portions thereof, for the Administrative Cost of Issuing the Loan Guarantee, as specified in the Loan Guarantee Agreement;

(3) OMB has reviewed and approved DOE's calculation of the Credit Subsidy Cost of the loan guarantee;

(4) The Department of the Treasury has been consulted as to the terms and conditions of the Loan Guarantee Agreement;

(5) The Loan Guarantee Agreement and related documents contain all terms and conditions DOE deems reasonable and necessary to protect the interest of the United States; and

(6) All conditions precedent specified in the Conditional Commitment are either satisfied or waived by a Contracting Officer and all other applicable contractual, statutory, and regulatory requirements are satisfied.

(e) Not later than the period approved in writing by the Contracting Officer, which may not be less than 30 days prior to the closing date, the Applicant must provide in writing updated project financing information if the terms and conditions of the financing arrangements changed between execution of the Conditional Commitment and that date. The Conditional Commitment must be updated to reflect the revised terms and conditions.

(f) Where the total Project Costs for an Eligible Project are projected to exceed \$25 million, the Applicant must provide a credit rating from a nationally recognized rating agency reflecting the revised Conditional Commitment for the project without a Federal guarantee. Where total Project Costs are projected to be less than \$25 million, the Secretary may, on a case-by-case basis, require a

credit rating. If a rating is required, an updated rating must be provided to the Secretary not later than 30 days prior to closing.

(g) Changes in the terms and conditions of the financing arrangements will affect the Credit Subsidy Cost for the Loan Guarantee Agreement. DOE may postpone the expected closing date pursuant to any changes submitted under paragraph (e) and (f) of this section. In addition, DOE may choose to terminate the Conditional Commitment.

§ 609.10 Loan Guarantee Agreement.

(a) Only a Loan Guarantee Agreement executed by a duly authorized DOE Contracting Officer can contractually obligate DOE to guarantee loans or other debt obligations.

(b) DOE is not bound by oral representations made during the Pre-Application stage, if Pre-Applications were solicited, or Application stage, or during any negotiation process.

(c) Except if explicitly authorized by an act of Congress, no funds obtained from the Federal Government, or from a loan or other instrument guaranteed by the Federal Government, may be used to pay for Credit Subsidy Costs, administrative fees, or other fees charged by or paid to DOE relating to the Title XVII program or any loan guarantee there under.

(d) Prior to the execution by DOE of a Loan Guarantee Agreement, DOE must ensure that the following requirements and conditions, which must be specified in the Loan Guarantee Agreement, are satisfied:

(1) The project qualifies as an Eligible Project under the Act and is not a research, development, or demonstration project [];

(2) The project will be constructed and operated in the United States;

(3) The face value of the debt guaranteed by DOE is limited to no more than 80 percent of total Project Costs.

(4) (i) Where DOE guarantees 100 percent of the Guaranteed Obligation, the loan shall be funded by the Federal Financing Bank;

(ii) Where DOE guarantees more than 90 percent of the Guaranteed Obligation, the guaranteed portion cannot be separated from or “stripped” from the non-guaranteed portion of the Guaranteed Obligation if the loan is participated, syndicated or otherwise resold in the secondary market;

(iii) Where DOE guarantees 90 percent or less of the Guaranteed Obligation, the guaranteed portion may be separated from or “stripped” from the non-guaranteed portion of the Guaranteed Obligation, if the loan is participated, syndicated or otherwise resold in the secondary debt market;

(5) The Borrower and other principals involved in the project have made or will make a significant equity investment in the project;

(6) The Borrower is obligated to make full repayment of the principal and interest on the Guaranteed Obligations and other project debt over a period of up to the lesser of 30 years or 90 percent of the projected useful life of the project’s major physical assets, as calculated in accordance with generally accepted accounting principles and practices. The non-guaranteed portion of any Guaranteed Obligation must be repaid on a pro-rata basis, and may not be repaid on a shorter amortization schedule than the guaranteed portion;

(7) The loan guarantee does not finance, either directly or indirectly, tax-exempt debt obligations, consistent with the requirements of section 149(b) of the Internal Revenue Code;

(8) The amount of the loan guaranteed, when combined with other funds committed to the project, will be sufficient to carry out the project, including adequate contingency funds;

(9) There is a reasonable prospect of repayment by Borrower of the principal of and interest on the Guaranteed Obligations and other project debt;

(10) The Borrower has pledged project assets and other collateral or surety, including non project-related assets, determined by DOE to be necessary to secure the repayment of the Guaranteed Obligations;

(11) The Loan Guarantee Agreement and related documents include detailed terms and conditions necessary and appropriate to protect the interest of the United States in the case of default, including ensuring availability of all the intellectual property rights, technical data including software, and physical assets necessary for any person or entity, including DOE, to complete, operate, convey, and dispose of the defaulted project;

(12) The interest rate on any Guaranteed Obligation is determined by DOE, after consultation with the Treasury Department, to be reasonable, taking into account the range of interest rates prevailing in the private sector for similar obligations of comparable risk guaranteed by the Federal government;

(13) Any Guaranteed Obligation is not subordinate to any loan or other debt obligation and is in a first lien position on all assets of the project and all additional collateral pledged as security for the Guaranteed Obligations and other project debt;

(14) There is satisfactory evidence that Borrower and Eligible Lenders or other Holders are willing, competent, and capable of performing the terms and conditions of the Guaranteed Obligations and other debt obligation and the Loan Guarantee Agreement, and will diligently pursue the project;

(15) The Borrower has made the initial (or total) payment of fees for the Administrative Cost of Issuing a Loan Guarantee for the construction and operational phases of the project (Third Fee), as specified in the Conditional Commitment;

(16) The Eligible Lender, other Holder or servicer has taken and is obligated to continue to take those actions necessary to perfect and maintain liens on assets which are pledged as collateral for the Guaranteed Obligation;

(17) If Borrower is to make payment in full for the Credit Subsidy Cost of the loan guarantee pursuant to section 1702(b)(2) of the Act, such payment must be received by DOE prior to, or at the time of, closing;

(18) DOE or its representatives have access to the project site at all reasonable times in order to monitor the performance of the project;

(19) DOE, the Eligible Lender, or other Holder and Borrower have reached an agreement as to the information that will be made available to DOE and the information that will be made publicly available;

(20) The prospective Borrower has filed applications for or obtained any required regulatory approvals for the project and is in compliance, or promptly will be in compliance, where appropriate, with all Federal, state, and local regulatory requirements;

(21) Borrower has no delinquent Federal debt, including tax liabilities, unless the delinquency has been resolved with the appropriate Federal agency in accordance with the standards of the Debt Collection Improvement Act of 1996;

(22) The Loan Guarantee Agreement contains such other terms and conditions as DOE deems reasonable and necessary to protect the interest of the United States; and

(23) (i) The Lender is an Eligible Lender, as defined in § 609.2 of this Attachment, and meets DOE's lender eligibility and performance requirement contained in §§ 609.11 (a) and (b) of this Attachment; and

(ii) the servicer meets the servicing performance requirements of § 609.11(c) of this Attachment.

(e) The Loan Guarantee Agreement must provide that, in the event of a default by the Borrower:

(1) Interest accrues on the Guaranteed Obligations at the rate stated in the Loan Guarantee Agreement or Loan Agreement until DOE makes full payment of the defaulted Guaranteed Obligations and, except when debt is funded through the Federal Financing Bank, DOE is not required to pay any premium, default penalties, or prepayment penalties;

(2) Upon payment of the Guaranteed Obligations by DOE, DOE is subrogated to the rights of the Holders of the debt, including all related liens, security, and collateral rights and has superior rights in and to the property acquired from the recipient of the payment as provided in § 609.15 of this Attachment.

(3) The Eligible Lender or other servicer acting on DOE's behalf is obligated to take those actions necessary to perfect and maintain liens on assets which are pledged as collateral for the Guaranteed Obligations.

(4) The holder of pledged collateral is obligated to take such actions as DOE may reasonably require to provide for the care, preservation, protection, and maintenance of such collateral so as to enable the United States to achieve maximum recovery upon default by Borrower on the Guaranteed Obligations.

(f) The Loan Guarantee Agreement must contain audit provisions which provide, in substance, as follows:

(1) The Eligible Lender or other Holder or other party servicing the Guaranteed Obligations, as applicable, and the Borrower, must keep such records concerning the project as are necessary to facilitate an effective and accurate audit and performance evaluation of the project as required in § 609.17 of this Attachment.

(2) DOE and the Comptroller General, or their duly authorized representatives, must have access, for the purpose of audit and examination, to any pertinent books, documents, papers, and records of the Borrower, Eligible Lender or other Holder, or other party servicing the Guaranteed Obligations, as applicable. Examination of records may be made during the regular business hours of the Borrower, Eligible Lender or other Holder, or other party servicing the Guaranteed Obligations, or at any other time mutually convenient as required in § 609.17 of this Attachment.

(g)(1) An Eligible Lender or other Holder may sell, assign or transfer a Guaranteed Obligation to another Eligible Lender that meets the requirements of § 609.11 of this Attachment. Such Eligible Lender to which a Guaranteed Obligation is assigned or transferred, is required to fulfill all servicing, monitoring, and reporting requirements contained in the Loan Guarantee Agreement and these regulations if the transferring Eligible Lender was forming these functions and transfer such functions to the new Eligible Lender. Any assignment or transfer, however, of the servicing, monitoring, and reporting functions must be approved by DOE in writing in advance of such assignment.

(2) The Secretary, or the Secretary's designee or contractual agent, for the purpose of identifying Holders with the right to receive payment under the guarantees shall include in the Loan Guarantee Agreement or related documents a procedure for tracking and identifying Holders of Guarantee Obligations. These duties usually will be performed by the servicer. Any contractual agent

approved by the Secretary to perform this function cannot transfer or assign this responsibility without the prior written consent of the Secretary.

§ 609.11 Lender Eligibility and Servicing Requirements.

(a) An Eligible Lender shall meet the following requirements:

(1) Not be debarred or suspended from participation in a Federal government contract (under 48 CFR part 9.4) or participation in a non-procurement activity (under a set of uniform regulations implemented for numerous agencies, such as DOE, at 2 CFR Part 180);

(2) Not be delinquent on any Federal debt or loan;

(3) Be legally authorized to enter into loan guarantee transactions authorized by the Act and these regulations and is in good standing with DOE and other Federal agency loan guarantee programs;

(4) Be able to demonstrate, or has access to, experience in originating and servicing loans for commercial projects similar in size and scope to the project under consideration; and

(5) Be able to demonstrate experience or capability as the lead lender or underwriter by presenting evidence of its participation in large commercial projects or energy-related projects or other relevant experience; or

(6) Be the Federal Financing Bank.

(b) When performing its duties to review and evaluate a proposed Eligible Project prior to the submission of a Pre-Application or Application, as appropriate, by the Project Sponsor through the execution of a Loan Guarantee Agreement, the Eligible Lender or DOE if loans are funded by the Federal Financing Bank, shall exercise the level of care and diligence that a reasonable and prudent lender would exercise when reviewing, evaluating and disbursing a loan made by it without a Federal guarantee.

(c) The servicing duties shall be performed by the Eligible Lender, DOE or other servicer if approved by the Secretary. When performing the servicing duties the Eligible Lender, DOE or other servicer shall exercise the level of care and diligence that a reasonable and prudent lender would exercise when servicing a loan made without a Federal guarantee, including:

(1) During the construction period, enforcing all of the conditions precedent to all loan disbursements, as provided in the Loan Guarantee Agreement, Loan Agreement and related documents;

(2) During the operational phase, monitoring and servicing the Debt Obligations and collection of the outstanding principal and accrued interest as well as ensuring that the collateral package securing the Guaranteed Obligations remains uncompromised; and

(3) As specified by DOE, providing annual or more frequent financial and other reports on the status and condition of the Guaranteed Obligations and the Eligible Project, and promptly notifying DOE if it becomes aware of any problems or irregularities concerning the Eligible Project or the ability of the Borrower to make payment on the Guaranteed Obligations or other debt obligations.

(c) With regard to partial guarantees, even though DOE may in part rely on the Eligible Lender or other servicer to service and monitor the Guaranteed Obligation, DOE will also conduct its own independent monitoring and review of the Eligible Project.

§ 609.12 Project Costs.

(a) Before entering into a Loan Guarantee Agreement, DOE shall determine the estimated Project Costs for the project that is the subject of the agreement. To assist the Department in making that determination, the Applicant must estimate, calculate and record all such costs incurred in the design, engineering, financing, construction, startup, commissioning and shakedown of the project in

accordance with generally accepted accounting principles and practices. Among other things, the Applicant must calculate the sum of necessary, reasonable and customary costs that it has paid and expects to pay, which are directly related to the project, including costs for escalation and contingencies, to estimate the total Project Costs.

(b) Project Costs include:

(1) Costs of acquisition, lease, or rental of real property, including engineering fees, surveys, title insurance, recording fees, and legal fees incurred in connection with land acquisition, lease or rental, site improvements, site restoration, access roads, and fencing;

(2) Costs of engineering, architectural, legal and bond fees, and insurance paid in connection with construction of the facility; and materials, labor, services, travel and transportation for facility design, construction, startup, commissioning and shakedown;

(3) Costs of equipment purchases;

(4) Costs to provide equipment, facilities, and services related to safety and environmental protection;

(5) Financial and legal services costs, including other professional services and fees necessary to obtain required licenses and permits and to prepare environmental reports and data;

(6) The cost of issuing project debt, such as fees, transaction and legal costs and other normal charges imposed by Eligible Lenders and other Holders;

(7) Costs of necessary and appropriate insurance and bonds of all types;

(8) Costs of design, engineering, startup, commissioning and shakedown;

(9) Costs of obtaining licenses to intellectual property necessary to design, construct, and operate the project;

(10) A reasonable contingency reserve for cost overruns during construction; and

(11) Capitalized interest necessary to meet market requirements, reasonably required reserve funds and other carrying costs during construction; and

(12) Other necessary and reasonable costs.

(c) Project Costs do not include:

(1) Fees and commissions charged to Borrower, including finder's fees, for obtaining Federal or other funds;

(2) Parent corporation or other affiliated entity's general and administrative expenses, and non-project related parent corporation or affiliated entity assessments, including organizational expenses;

(3) Goodwill, franchise, trade, or brand name costs;

(4) Dividends and profit sharing to stockholders, employees, and officers;

(5) Research, development, and demonstration costs of readying the innovative energy or environmental technology for employment in a commercial project;

(6) Costs that are excessive or are not directly required to carry out the project, as determined by DOE, including but not limited to the cost of hedging instruments;

(7) Expenses incurred after startup, commissioning, and shakedown before the facility has been placed in service;

(8) Borrower-paid Credit Subsidy Costs and Administrative Costs of Issuing a Loan Guarantee; and

(9) Operating costs.

§ 609.13 Principal and Interest Assistance Contract.

With respect to the guaranteed portion of any Guaranteed Obligation, and subject to the availability of appropriations, DOE may enter into a contract to pay Holders, for and on behalf of Borrower, from funds appropriated for that purpose, the principal and interest charges that become due and payable on the unpaid balance of the guaranteed portion of the Guaranteed Obligation, if DOE finds that:

(a) The Borrower:

(1) Is unable to make the payments and is not in default; and

(2) Will, and is financially able to, continue to make the scheduled payments on the remaining portion of the principal and interest due under the non-guaranteed portion of the debt obligation, if any, and other debt obligations of the project, or an agreement, approved by DOE, has otherwise been reached in order to avoid a payment default on non-guaranteed debt.

(b) It is in the public interest to permit Borrower to continue to pursue the purposes of the project;

(c) In paying the principal and interest, the Federal government expects a probable net benefit to the Government will be greater than that which would result in the event of a default;

(d) The payment authorized is no greater than the amount of principal and interest that Borrower is obligated to pay under the terms of the Loan Guarantee Agreement; and

(e) Borrower agrees to reimburse DOE for the payment (including interest) on terms and conditions that are satisfactory to DOE and executes all written contracts required by DOE for such purpose.

§ 609.14 Full Faith and Credit and Incontestability.

The full faith and credit of the United States is pledged to the payment of all Guaranteed Obligations issued in accordance with the Solicitation with respect to principal and interest. Such guarantee shall be conclusive evidence that it has been properly obtained; that the underlying loan qualified for such guarantee; and that, but for fraud or material misrepresentation by the Holder, such guarantee will be presumed to be valid, legal, and enforceable.

§ 609.15 Default, Demand, Payment, and Collateral Liquidation.

(a) In the event that the Borrower has defaulted in the making of required payments of principal or interest on any portion of a Guaranteed Obligation, and such default has not been cured within the period of grace provided in the Loan Guarantee Agreement and/or the Loan Agreement, the Eligible Lender or other Holder, or nominee or trustee empowered to act for the Eligible Lender or other Holder (referred to in this section collectively as “Holder”), may make written demand upon the Secretary for payment pursuant to the provisions of the Loan Guarantee Agreement.

(b) In the event that the Borrower is in default as a result of a breach of one or more of the terms and conditions of the Loan Guarantee Agreement, note, mortgage, Loan Agreement, or other contractual obligations related to the transaction, other than the Borrower’s obligation to pay principal or interest on the Guaranteed Obligation, as provided in paragraph (a) of this section, the Holder will not be entitled to make demand for payment pursuant to the Loan Guarantee Agreement, unless the

Secretary agrees in writing that such default has materially affected the rights of the parties, and finds that the Holder should be entitled to receive payment pursuant to the Loan Guarantee Agreement.

(c) In the event that the Borrower has defaulted as described in paragraph (a) of this section and such default is not cured during the grace period provided in the Loan Guarantee Agreement, the Secretary shall notify the U.S. Attorney General and may cause the principal amount of all Guaranteed Obligations, together with accrued interest thereon, and all amounts owed to the United States by Borrower pursuant to the Loan Guarantee Agreement, to become immediately due and payable by giving the Borrower written notice to such effect (without the need for consent or other action on the part of the Holders of the Guaranteed Obligations). In the event the Borrower is in default as described in paragraph (b) of this section, where the Secretary determines in writing that such a default has materially affected the rights of the parties, the Borrower shall be given the period of grace provided in the Loan Guarantee Agreement to cure such default. If the default is not cured during the period of grace, the Secretary may cause the principal amount of all Guaranteed Obligations, together with accrued interest thereon, and all amounts owed to the United States by Borrower pursuant to the Loan Guarantee Agreement, to become immediately due and payable by giving the Borrower written notice to such effect (without any need for consent or other action on the part of the Holders of the Guaranteed Obligations).

(d) No provision of this Attachment shall be construed to preclude forbearance by the Holder with the consent of the Secretary for the benefit of the Borrower.

(e) Upon the making of demand for payment as provided in paragraph (a) or (b) of this section, the Holder shall provide, in conjunction with such demand or immediately thereafter, at the request of the Secretary, the supporting documentation specified in the Loan Guarantee Agreement and any other supporting documentation as may reasonably be required to justify such demand.

(f) Payment as required by the Loan Guarantee Agreement of the Guaranteed Obligation shall be made 60 days after receipt by the Secretary of written demand for payment, provided that the

demand complies with the terms of the Loan Guarantee Agreement. The Loan Guarantee Agreement shall provide that interest shall accrue to the Holder at the rate stated in the Loan Guarantee Agreement until the Guaranteed Obligation has been fully paid by the Federal government.

(g) The Loan Guarantee Agreement shall provide that, upon payment of the Guaranteed Obligations, the Secretary shall be subrogated to the rights of the Holders and shall have superior rights in and to the property acquired from the Holders. The Holder shall transfer and assign to the Secretary all rights held by the Holder of the Guaranteed Obligation. Such assignment shall include all related liens, security, and collateral rights to the extent held by the Holder.

(h) Where the Loan Guarantee Agreement so provides, the Eligible Lender or other Holder, or other servicer, as appropriate, and the Secretary may jointly agree to a plan of liquidation of the assets pledged to secure the Guaranteed Obligation.

(i) Where payment of the Guaranteed Obligation has been made and the Eligible Lender or other Holder or other servicer has not undertaken a plan of liquidation, the Secretary, in accordance with the rights received through subrogation and acting through the U.S. Attorney General, may seek to foreclose on the collateral assets and/or take such other legal action as necessary for the protection of the Government.

(j) If the Secretary is awarded title to collateral assets pursuant to a foreclosure proceeding, the Secretary may take action to complete, maintain, operate, or lease the project facilities, or otherwise dispose of any property acquired pursuant to the Loan Guarantee Agreement or take any other necessary action which the Secretary deems appropriate, in order that the original goals and objectives of the project will, to the extent possible, be realized.

(k) In addition to foreclosure and sale of collateral pursuant thereto, the U.S. Attorney General shall take appropriate action in accordance with rights contained in the Loan Guarantee Agreement to recover costs incurred by the Government as a result of the defaulted loan or other defaulted obligation. Any recovery so received by the U.S. Attorney General on behalf of the Government shall

be applied in the following manner: First to the expenses incurred by the U.S. Attorney General and DOE in effecting such recovery; second, to reimbursement of any amounts paid by DOE as a result of the defaulted obligation; third, to any amounts owed to DOE under related principal and interest assistance contracts; and fourth, to any other lawful claims held by the Government on such process. Any sums remaining after full payment of the foregoing shall be available for the benefit of other parties lawfully entitled to claim them.

(l) If there was a partial guarantee of the Guaranteed Obligation by DOE, the remaining funds received as a result of the liquidation of project assets may, if so agreed in advance, be applied as follows:

(1) First, to the payment of reasonable and customary fees and expenses incurred in the liquidation; and

(2) Second, distributed among the Holders of the debt on no greater than a pro rata share basis.

(m) No action taken by the Eligible Lender or other Holder or other servicer in the liquidation of any pledged assets will affect the rights of any party, including the Secretary, having an interest in the loan or other debt obligations, to pursue, jointly or severally, to the extent provided in the Loan Guarantee Agreement, legal action against the Borrower or other liable parties, for any deficiencies owing on the balance of the Guaranteed Obligations or other debt obligations after application of the proceeds received upon liquidation.

(n) In the event that the Secretary considers it necessary or desirable to protect or further the interest of the United States in connection with the liquidation of collateral or recovery of deficiencies due under the loan, the Secretary will take such action as may be appropriate under the circumstances.

(o) Nothing in this Attachment precludes the Secretary from purchasing the Holder's interest in the project upon liquidation.

§ 609.16 Perfection of Liens and Preservation of Collateral.

(a) The Loan Guarantee Agreement and other documents related thereto shall provide that:

(1) The Eligible Lender or, or DOE in conjunction with the Federal Financing Bank where the loan is funded by the Federal Financing Bank, or other Holder or other servicer will take those actions necessary to perfect and maintain liens, as applicable, on assets which are pledged as collateral for the guaranteed portion of the loan; and

(2) Upon default by the Borrower, the holder of pledged collateral shall take such actions as the Secretary may reasonably require to provide for the care, preservation, protection, and maintenance of such collateral so as to enable the United States to achieve maximum recovery from the pledged assets. The Secretary shall reimburse the holder of collateral for reasonable and appropriate expenses incurred in taking actions required by the Secretary. Except as provided in § 609.15 of this Attachment, no party may waive or relinquish, without the consent of the Secretary, any collateral securing the Guaranteed Obligation to which the United States would be subrogated upon payment under the Loan Guarantee Agreement.

(b) In the event of a default, the Secretary may enter into such contracts as the Secretary determines are required to preserve the collateral. The cost of such contracts may be charged to the Borrower.

§ 609.17 Audit and Access to Records.

(a) The Loan Guarantee Agreement and related documents shall provide that:

(1) The Eligible Lender, or DOE in conjunction with the Federal Financing Bank where loans are funded by the Federal Financing Bank or other Holder or other party servicing the Guaranteed Obligations, as applicable, and the Borrower, shall keep such records concerning the project as is necessary, including the Pre-Application, Application, Term Sheet, Conditional Commitment, Loan Guarantee Agreement, Credit Agreement, mortgage, note, disbursement requests and supporting documentation, financial statements, audit reports of independent accounting firms, lists of all project assets and non-project assets pledged as security for the Guaranteed Obligations, all

off-take and other revenue producing agreements, documentation for all project indebtedness, income tax returns, technology agreements, documentation for all permits and regulatory approvals and all other documents and records relating to the Eligible Project, as determined by the Secretary, to facilitate an effective audit and performance evaluation of the project; and

(2) The Secretary and the Comptroller General, or their duly authorized representatives, shall have access, for the purpose of audit and examination, to any pertinent books, documents, papers and records of the Borrower, Eligible Lender or DOE or other Holder or other party servicing the Guaranteed Obligation, as applicable. Such inspection may be made during regular office hours of the Borrower, Eligible Lender or DOE or other Holder, or other party servicing the Eligible Project and the Guaranteed Obligations, as applicable, or at any other time mutually convenient.

(b) The Secretary may from time to time audit any or all items of costs included as Project Costs in statements or certificates submitted to the Secretary or the servicer or otherwise, and may exclude or reduce the amount of any item which the Secretary determines to be unnecessary or excessive, or otherwise not to be an item of Project Costs. The Borrower will make available to the Secretary all books and records and other data available to the Borrower in order to permit the Secretary to carry out such audits. The Borrower should represent that it has within its rights access to all financial and operational records and data relating to Project Costs, and agrees that it will, upon request by the Secretary, exercise such rights in order to make such financial and operational records and data available to the Secretary. In exercising its rights hereunder, the Secretary may utilize employees of other Federal agencies, independent accountants, or other persons.

§ 609.18 Deviations.

To the extent that such requirements are not specified by the Act or other applicable statutes, DOE may authorize deviations on an individual request basis from the requirements of this Attachment upon a finding that such deviation is essential to program objectives and the special circumstances stated in the request make such deviation clearly in the best interest of the Government. DOE will

consult with OMB and the Secretary of the Treasury before DOE grants any deviation that would constitute a substantial change in the financial terms of the Loan Guarantee Agreement and related documents. Any deviation, however, that was not captured in the Credit Subsidy Cost will require either additional fees or discretionary appropriations. A recommendation for any deviation shall be submitted in writing to DOE. Such recommendation must include a supporting statement, which indicates briefly the nature of the deviation requested and the reasons in support thereof.

Attachment H

Davis Bacon Contract Provisions

29 CFR 5.5(a) - Contract provisions and related matters.

Section Number: 5.5

Section Name: Contract provisions and related matters.

(a) The Agency head shall cause or require the contracting officer to insert in full in any contract in excess of \$2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a public building or public work, or building or work financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to the labor standards provisions of any of the acts listed in Sec. 5.1, the following clauses (or any modifications thereof to meet the particular needs of the agency, Provided, That such modifications are first approved by the Department of Labor):

(1) Minimum wages. (i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in Sec. 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(2) Withholding. The (write in name of Federal Agency or the loan or grant recipient) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the (Agency) may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) Payrolls and basic records. (i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all

laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the (write in name of appropriate federal agency) if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant, sponsor, or owner, as the case may be, for transmission to the (write in name of agency). The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the (write in name of appropriate federal agency) if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit them to the applicant, sponsor, or owner, as the case may be, for transmission to the (write in name of agency), the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the sponsoring government agency (or the applicant, sponsor, or owner).

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under Sec. 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under Sec. 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the (write the name of the agency) or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and trainees--(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(5) Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the (write in the name of the Federal agency) may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of eligibility. (i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

- (ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
- (iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.