

## FOA Alert

# Department of Energy Advanced Fossil Energy Loan Guarantee Program Alert

### DOE Advanced Fossil Energy Loan Guarantee Summary

#### FOA Dates:

- Issued: December 12, 2013
- Part I Due: February 28, 2014 (and rolling thereafter)
- Part II Due: May 30, 2014 (and rolling thereafter)

**Program:** DOE Loan Programs Office

#### Newly Defined Technology Areas of Interest:

- Distributed generation, fuel cells, and microturbines
- Combined heat and power, district heating and cooling, and microgrids
- Advanced materials and waste heat recovery for fossil and industrial facilities
- Carbon capture and utilization such as enhanced oil recovery or biofuel and bioproduct production

#### Key Financial Criteria:

- \$8 billion in total loan guarantee authority
- Typical project costs \$25 million or more
- Fee due with Part I submission reduced to \$75,000
- Fee due with Part II submission now \$925,000
- Other applicant costs include facility fee, maintenance fee, DOE independent consultant and outside counsel fees, and credit subsidy fee (due at execution of loan guarantee agreement)

#### WSGR Insights & Recommendations:

- Expanded technologies of interest, lowered Part I application fees, and rolling review deadlines make this program more attractive than originally proposed
- Key evaluation criteria remains financial eligibility and strength of project sponsor
- The DOE plans to invite into Phase II only those applicants with a high likelihood of success
- Applicants still need to keep in mind likely high transaction costs and unknown credit subsidy fees

On December 12, 2013, the U.S. Department of Energy (DOE) Loan Programs Office (LPO) issued its final loan guarantee solicitation for innovative and advanced fossil energy projects and facilities. As discussed in a [previous WSGR Alert](#), this solicitation will support projects that substantially reduce greenhouse gas and other air pollution at new or existing fossil energy facilities or large industrial and commercial sites in the United States.

The final solicitation follows the draft solicitation and the DOE's review of comments thereon. The LPO gave further consideration to how best to make the guarantees accessible to earlier-stage companies while still preserving the LPO's goal of supporting only the most financially viable projects.

Following is a summary of the important changes in the final solicitation, which should be read in conjunction with our previous WSGR Alert referenced above.

**Rolling Application Deadlines.** The DOE will accept applications under this solicitation on a rolling basis through 2015. The first deadline for Part I submissions is February 28, 2014; successful applicants will then submit their Part II submissions by May 30, 2014. The subsequent submission due dates are as follows:

Part I	Part II
April 30, 2014	August 29, 2014
July 31, 2014	October 31, 2014
December 5, 2014	February 27, 2015
May 29, 2015	August 31, 2015
October 30, 2015	January 29, 2016

**Expanded Technology Areas of Interest.** The DOE initially indicated that this solicitation would support relatively traditional categories of fossil projects in the areas of (1) advanced resource development, (2) carbon capture, (3) low-carbon power systems, and (4) efficiency improvements. The LPO received significant input from industry on the draft solicitation regarding technologies and projects most likely to fit the DOE's eligibility criteria. As a result, the final solicitation expands the DOE's areas of interest under the categories of (3) low-carbon power systems and (4) efficiency improvements.

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Technology Practice**

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The LPO has now clearly delineated that the solicitation is also applicable to companies active in the following:

- distributed generation such as fuel cells and microturbines, combined heat and power, district heating and cooling, and microgrids for commercial and industrial applications
- high-temperature materials, super alloys and ceramic refractories, and waste heat recovery for power plants and industrial facilities
- carbon capture and utilization, such as enhanced oil recovery or biofuels and bioproducts production

**Updated Guidance on Evaluation Criteria.** The DOE's updated evaluation criteria provide scoring guidance and key evaluation factors that applicants should address in their submissions, which are detailed below.

Financial Factors – 45 Percent

- The project's economic viability with and without the DOE loan guarantee, the availability of other federal and state incentives other than the DOE loan guarantee, and its ability to generate sufficient cash flow to service the borrower's debt obligations over the life of the loan guarantee
- The project sponsor's financial commitment to the project, financial strength and ability to pay transaction costs, and the credibility of its business and financial plans
- Overriding market factors that could significantly influence the success of the project
- The sources and uses of funds proposed by the applicant and projections for future financial performance
- The project sponsor's financial and managerial investment in the project and its capability to implement the project
- The extent to which the project uses partial guarantees and/or co-lenders

Technical Factors – 35 Percent

- The technical readiness, long-term applicability, and innovativeness of the technology or process when compared to established commercial systems
- The capabilities of the project team, including prior experience in developing, constructing, and operating similar projects, and whether the project has obtained the necessary intellectual property
- The technical approach and work plans proposed to achieve the stated cost, schedule, and performance objectives and milestones
- The strength and completeness of the construction plan for the project

Programmatic Factors – 20 Percent

- Legal review of the project's legal structure and risk
- The appropriate level of environmental review, including the level of National Environmental Policy Act (NEPA) review required

## Loan Guarantee Solicitation... (Continued)

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The DOE will also evaluate the extent to which an application that scores highly enough on the above factors meets policy objectives, such as avoiding, reducing, or sequestering anthropogenic emissions of greenhouse gases.

**Redefined Program Fees.** The LPO updated the program fees to lower the barrier to initial submission via reduced Part I submission fees and increased Part II submission fees. In addition to the submission fees, applicants should keep in mind that they will also be required to pay the fees of the DOE's outside consultants and legal counsel during the submission review process.

Application Fees	Amount	Due Date
Application Fee Part I	\$75,000	With Part I submission
Application Fee Part II	\$925,000	With Part II submission
Due Diligence Consulting and Legal Fees	To be determined by DOE	Throughout review process
Facility Fee Part I	.125% of principal amount of guarantee	Upon issuance of conditional commitment
Facility Fee Part II	.375% of principal amount of guarantee	Upon execution of loan guarantee agreement
Credit Subsidy Fee	TBD by Office of Management and Budget	Upon execution of loan guarantee agreement
Annual Maintenance Fee	\$500,000/year	Upon execution of loan guarantee agreement and annually thereafter

**WSGR Insights and Recommendations.** Since the release of the draft solicitation in July, the DOE LPO has formally and informally solicited significant feedback from industry, including technology developers, potential applicants, private sector subject-matter experts, key trade associations, and applicable members of the financial community. The resulting final solicitation addresses many of the concerns raised during those discussions. For example, the final solicitation significantly lowers fees for Part I submissions, further defines the advanced technology areas of interest, and delineates the evaluation process to provide clearer guidance on successful applications. However, applicants may still be wary of the significant costs that will be incurred during the submission and review process and continuing during the life of the loan guarantee. In addition, applicants must remember that they will pay the credit subsidy costs (which is essentially the "premium" for the "insurance policy" provided by the guarantee) and that the amount of the credit subsidy cost will not be known until late in the process, prior to closing, raising the possibility that an applicant may be successful all the way through the process but still decide not to close when presented with the cost of the guarantee.



**Loan Guarantee Solicitation...**  
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Accordingly, Wilson Sonsini Goodrich & Rosati believes that this loan guarantee opportunity has become incrementally more attractive for innovative energy and clean technology companies, but before applying to the program, potential applicants should be comfortable that their project will be scored favorably against the criteria set forth by the DOE LPO to date and be fully aware of all applicable fees, costs, and risks of failing to reach a closing. We tend to think that, in the end, this solicitation will be of interest primarily to large companies with very expensive projects that have no other opportunities for financing and where the costs of a long due diligence, negotiation, and closing process will not be material if the financing does not, in fact, close or the credit subsidy cost is calculated conservatively. Additionally, very well funded early-stage companies may find this solicitation of value for their first commercial-scale project.

As the program proceeds and WSGR gains further insight into these areas and the program's success, we will continue to update our clients and prospects. WSGR has assisted numerous clients with successful DOE loan guarantee transactions. For more information or assistance with submitting an application before the February 28, 2014, deadline, please contact a WSGR attorney or senior advisor:

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