

DOE's New Loan Guarantee Program Targets Renewable Energy Projects

On September 7, 2009, the U.S. Department of Energy (DOE) announced that it will provide up to \$750 million in Recovery Act funds to support and help accelerate the development of projects targeting conventional renewable energy generation. The funding is expected to cover \$4 billion to \$8 billion in lending to renewable energy projects. Unlike prior solicitations that targeted energy generation projects using new or innovative renewable technologies, this program is available for conventional projects including wind, solar, biomass, geothermal and hydropower.

Under the new Financial Institution Partnership Program (FIPP), financial institutions (and not project sponsors) are eligible to apply for the loan guarantees, which will share the risk for up to 80% of the maximum aggregate principal and interest during the loan term. The program's stated goal is to "leverage the human and financial capital of private sector financial institutions by accelerating the loan application process while balancing risk between DOE and private sector partners participating in the program." The DOE emphasizes that while the program is intended to shift the financial risk associated with a project's technology to the government, it is not intended to absorb other risks such as general contractual and construction risks. Therefore, the project's debt must obtain a credit rating of at least "BB" or equivalent, and the lender must certify that the loan would receive internal credit approval using standard credit policies even if it were not partially guaranteed. In addition, the application must demonstrate that the lender has evaluated the financing structure and construction plans and has modeled the project and quantified the impacts of risks by stress-testing the model to understand how changes in the model's assumptions can affect the project's capacity to make full and timely repayments of the loan. Finally, projects must commence construction no later than September 30, 2011.

The DOE established a rolling application process and schedule that includes two phases. The first part requires Lender-Applicants to submit a letter of commitment indicating an intent to file a complete application for funding under the program and a non-refundable portion of the application fee. The DOE will evaluate the Part I submission to verify that the project and the Lender-Applicant meet the program's threshold eligibility requirements before the applicant can be approved to file the Part II application. The first round of Part II applications are due November 23, 2009. Eight deadlines are set throughout 2010 and one in 2011. The DOE has indicated that it intends to respond to applicants within 30 to 60 days.

Other factors for potential project sponsors and applicants to consider include compliance with the American Recovery and Reinvestment Act's reporting and Buy American requirements as well as the government's obligation to evaluate each project for compliance with the National Environmental Protection Act (NEPA). The Recovery Act imposes quarterly reporting obligations concerning several issues including the number of jobs created or retained by a project funded by the Act. The Act also requires that certain materials used in public building or public works projects be manufactured using domestic steel. Additionally, NEPA requires all federally funded projects to be evaluated for environmental impacts. The DOE will determine the level of NEPA review required, if any, when an application is selected for due diligence.

What This Means to You

If your company is considering a renewable energy generation project using conventional technology but looking for financing options to get it off the ground, this program could be of great benefit. Feel free to contact one of our experienced attorneys to assist in evaluating your project's eligibility and submitting an application to the Department of Energy.

Contact Info

Elizabeth Souder - 816.983.8216

Husch Blackwell Sanders LLP regularly publishes updates on industry trends and new developments in the law for our clients and friends. Please contact us if you would like to receive updates and newsletters, or request a printed copy.

Husch Blackwell Sanders encourages you to reprint this material. Please include the statement, "Reprinted with permission from Husch Blackwell Sanders, copyright 2010, www.huschblackwell.com." at the end of any reprints. Please also email info@huschblackwell.com to tell us of your reprint.

This information is intended only to provide general information in summary form on legal and business topics of the day. The contents hereof do not constitute legal advice and should not be relied on as such. Specific legal advice should be sought in particular matters.