

**LOAN GUARANTEE
SOLICITATION ANNOUNCEMENT**



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

**FEDERAL LOAN GUARANTEES FOR
COMMERCIAL TECHNOLOGY RENEWABLE ENERGY
GENERATION PROJECTS UNDER THE FINANCIAL
INSTITUTION PARTNERSHIP PROGRAM**

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Full Announcement

Loan Guarantee Solicitation for Applications for Commercial Technology Renewable Energy Generation Projects

I. Solicitation Description

A. Purpose of Solicitation

This solicitation announcement (including all Attachments, “Solicitation”) invites the submission of applications from Lender-Applicants (as defined in Section I.C below) for partial, risk-sharing 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 renewable energy systems, including incremental hydropower, that generate electricity or thermal energy by using Commercial Technology (as defined in Section 609.2 of Attachment G) and that are located in the United States (“Commercial Technology Renewable Energy Generation Projects”). 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 projects and related manufacturing facilities, electric power transmission projects, and leading edge biofuels 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 energy, transmission and leading edge biofuels projects. Approximately three billion nine hundred thirty five million dollars (\$3,935,000,000) in appropriated funds has been made available under the Recovery Act 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 Initial Implementing Guidance for the Recovery Act dated February 18, 2009 (M-09-10), Updated Implementing Guidance for the Recovery Act dated April 3, 2009 (M-09-15) and Updated Implementing Guidance for the Reports on Use of Funds Pursuant to the Recovery Act dated June 22, 2009 (M-09-21) (collectively referred to herein as the “OMB Implementing Guidance”). OMB and/or DOE may be issuing additional guidance concerning the Recovery Act with which Lender-Applicants (as defined in Section II.C below) and prospective Borrowers must comply. Lender-Applicants should consult the DOE website, www.energy.gov, the Program Website identified below, the OMB website, http://www.whitehouse.gov/omb/memoranda_default/, and the Recovery Act website, www.recovery.gov regularly to keep abreast of guidance and information as they evolve. Lender-Applicants, Borrowers and Project Sponsors must comply with requirements of the Recovery Act applicable to them, as the Loan Guarantee Agreement and/or Loan Agreement entered into in connection with a transaction contemplated by this Solicitation shall require.

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 other solicitations. All Lender-Applicants are encouraged to review and become familiar with the requirements of Section 1705 of Title XVII and the provisions set forth in Attachments G, I, J and K, which, together with other requirements set forth herein, govern this Solicitation. Copies of the authorities cited herein may 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 (“CFR”) nor a financial assistance award under 10 CFR Part 600 is contemplated by this Solicitation.

Of the approximately three billion nine hundred thirty five million dollars (\$3,935,000,000) 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 Commercial Technology Renewable Energy Generation 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 Commercial Technology Renewable Energy Generation 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 Commercial Technology Renewable Energy Generation Projects, DOE anticipates issuing an additional FIPP solicitation in the future that will afford an opportunity for the submission of additional loan guarantee applications in support of commercial renewable manufacturing projects eligible under Section 1705 of Title XVII.

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 of Title XVII, 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 partial, risk-sharing loan guarantee applications solely with respect to Commercial Technology Renewable Energy Generation Projects. Appropriated funds under the Recovery Act are not available under this Solicitation to cover the Credit Subsidy Costs of any project other than Commercial Technology Renewable Energy Generation Projects. A future DOE FIPP solicitation is expected to afford opportunities for the submission of additional loan guarantee applications in support of commercial renewable manufacturing projects eligible under Section 1705 of Title XVII.

The Section 1705 Program is subject to all of the requirements of Title XVII, including Section 1702, but excluding Section 1703. 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 principal and interest on the Guaranteed Obligation and that 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 research, development or demonstration projects.

OMB has issued the OMB Implementing Guidance and may be issuing additional guidance concerning the Recovery Act. Any Loan Guarantee Agreement or Loan Agreement entered into pursuant to this Solicitation will require compliance with all applicable provisions of the Recovery Act. Lender-Applicants, proposed Borrowers and Project Sponsors should consult the DOE website, www.energy.gov, the Program Website, <http://www.lgprogram.energy.gov/>, the OMB website, http://www.whitehouse.gov/omb/memoranda_default/, and the Recovery Act website, www.recovery.gov, regularly to keep abreast of guidance and information as they evolve.

C. Financial Institution Partnership Program

DOE has developed an application process that will evaluate the Lender-Applicant’s analysis of the proposed Borrower’s ability to repay the Guaranteed Obligation and any other project debt, the Lender-Applicant’s and proposed Borrower’s ability to meet statutory and policy goals established by Title XVII (excluding Section 1703) and the requirements set forth in this Solicitation, and the ability of the Lender-Applicant to satisfy DOE’s loan underwriting criteria. For this Solicitation and the contemplated solicitation for commercial renewable manufacturing projects under Section 1705, DOE will implement this application process by directly working with certain qualified financial institutions through a set of procedures established by DOE as its “Financial Institution Partnership Program” (“FIPP”) and as further described below.

The FIPP implements part of the Section 1705 Program and does not replace or change, and is not intended in any way to replace or change, the fundamental requirements of the Section 1705 Program, including Title XVII (excluding Section 1703), the Recovery Act and, as described more fully in Attachment G, all provisions related to the application process for, and possible issuance of, a loan guarantee under Title XVII. Accordingly, the FIPP should be viewed solely as a set of additional standards and procedures (primarily focused on qualifying financial institutions) that are designed to assist DOE in implementing the Section 1705 Program as quickly and prudently as possible, consistent with the objectives of the Recovery Act.

In general, the FIPP is intended to expedite the loan guarantee process and expand senior credit capacity for the efficient and prudent financing of eligible projects under Section 1705 of Title XVII that use Commercial Technologies. This objective will be primarily accomplished by additional roles defined for certain financial institutions satisfying the applicable qualifications set forth in Attachment J in connection with a loan guarantee for this Solicitation and the

contemplated future FIPP solicitation for commercial renewable manufacturing projects under Section 1705:

1. An applicant under this Solicitation (a “Lender-Applicant”) is a financial institution, or one of a group of financial institutions chosen to represent them for this purpose, that must satisfy the requirements of a Lead Lender (defined below) as set forth in Attachment J to this Solicitation and fund and hold all or a portion of a Guaranteed Obligation in accordance with the requirements in Attachment I and as set forth in the Loan Guarantee Agreement and related documentation. When a loan guarantee under this Solicitation is issued at closing, the Lender-Applicant becomes a Holder (as defined in Section 609.2 of Attachment G) that is an Eligible Lender meeting the qualifications in Section 609.11(a)(1) through (5) of Attachment G as set forth in Section 2 of Attachment J (the “Lead Lender”). Each Guaranteed Obligation is generally expected to have one Lead Lender who will act as the administrative agent for the Guaranteed Obligation (the “Administrative Agent”) and perform the servicing of the Guaranteed Obligation, including the duties set forth in Section 609.11(c) of Attachment G. Proposed Borrowers and Project Sponsors may not apply directly to DOE under this Solicitation but must instead work with financial institutions satisfying the qualifications of a Lead Lender as set forth in Attachment J, which may apply directly to DOE, in order to access a loan guarantee under the FIPP. In addition, the FIPP loan guarantee under this Solicitation will be partial and risk-sharing. Therefore, the Lender-Applicant and other participating financial institutions, as applicable, will be required to share in a significant amount of the risk of the Guaranteed Obligation on a *pari-passu* basis with the DOE as guarantor. Lender-Applicants and other Holders satisfying the qualifications in Section 1 of Attachment J are expected to evaluate, and receive credit approval for, the Guaranteed Obligation in accordance with their standard internal credit policies and procedures for comparable senior debt transactions and as if the Guaranteed Obligation were not partially guaranteed.
2. The Lender-Applicant will have the lead role in developing the overall financial structure of the proposed project and the specific terms of the Guaranteed Obligation, in the usual and customary manner of a lead lender or underwriter of a senior credit facility. However, under this FIPP Solicitation, the Lender-Applicant is also expected (a) to ensure that the Guaranteed Obligation and the associated documentation accommodate the requirements of the Section 1705 Program, including the provisions of Attachments G and I, in addition to the usual and customary provisions that a reasonable and prudent lender would ordinarily require, and (b) to describe in detail the syndication, placement, distribution and other aspects of funding the Guaranteed Obligation and demonstrate how the proposed plan complies with the objectives and parameters for use of the guarantee under this FIPP Solicitation, including the parameters set forth in Attachment A1, Section I.B.5. Certain required and specified terms and conditions of the Guaranteed Obligation are found in Attachment I.
3. In order to participate in this FIPP Solicitation, a financial institution will be required to qualify in accordance with standards that are related to its role in the financing of the Guaranteed Obligation. Qualifications for Lead Lenders and Holders under this FIPP Solicitation are described in Attachment J. The qualifications are intended to ensure that each such financial institution is demonstrably able to fulfill its expected role. Such qualifications are specific to this particular FIPP Solicitation and may be different for

the contemplated future solicitation for commercial renewable manufacturing projects under the FIPP. Financial institutions that are interested in participating in the FIPP for this Solicitation should refer to Attachment J to determine their qualification status.

4. Under the FIPP, Lead Lenders will also have direct, continuing obligations to DOE and its agents, such as the Master Servicer (as described in Attachment K), with regard to servicing and monitoring the Guaranteed Obligation and the project being financed, including those duties set forth in Section 609.11(c). These obligations are more fully described in Attachment K.

D. Finance Considerations for Applications

Loan guarantees issued under Section 1705 of Title XVII must satisfy specific 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 Lender-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 investment (defined by Attachment G as cash) in the project.

For this Solicitation, a guarantee percentage of the Guaranteed Obligation is limited to no more than eighty percent (80%) of the maximum aggregate principal amount of, and interest on, the Guaranteed Obligation during its term.

In addition, for this Solicitation, the Guaranteed Obligation is expected to be “traditional” senior secured debt, structured in accordance with customary market terms applicable to a high-quality, limited or non-recourse, long-term, energy project finance transaction and not modified to accommodate tax-oriented investment structures.

In addition to the requirements described in Attachment I, DOE expects that the information requested, and the documentation produced, 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 issue loan guarantees to support projects primarily using limited or non-recourse project finance structures that satisfy the financing requirements under Title XVII and this Solicitation.

DOE will not assume pre-construction risks under this Solicitation.

II. Eligibility Information

Before seeking a loan guarantee, Lender-Applicants are strongly encouraged to verify that their proposed Borrowers’ projects are not eliminated by any of the threshold determinations set forth in Section 609.7(a) of Attachment G (collectively, the “Threshold Determinations”). In addition to Section 609.7(a) of Attachment G, an application will be denied if (i) the project will not “commence construction” (as defined in Section II.A below) on or before September 30, 2011 or (ii) the Guaranteed Obligation is not expected to have (whether structured on a

project finance or a corporate finance basis) a credit rating from a nationally recognized rating agency of at least a credit rating equivalent of ‘BB’ from Standard & Poor’s or Fitch or ‘Ba2’ from Moody’s as evaluated, in each case, without the benefit of any DOE loan guarantee or any other credit support which would not be available to DOE.

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 Commercial Technology Renewable Energy Generation Project, as defined in Section I.A above, that (i) is reasonably likely, at the time of the filing of the Part I submission, to commence construction on or before September 30, 2011, (ii) meets all applicable requirements of Title XVII, including Section 1705, of the Recovery Act, and of this Solicitation, including all Attachments and (iii) is expected to have, whether structured on a project finance or a corporate finance basis, a credit rating from a nationally recognized rating agency of at least a credit rating equivalent of ‘BB’ from Standard & Poor’s or Fitch or ‘Ba2’ from Moody’s, as evaluated without the benefit of any DOE guarantee or any other credit support which would not be available to DOE (an “Eligible Project”):

Project Types

Under this Solicitation, DOE is seeking applications exclusively for Commercial Technology Renewable Energy Generation Projects under Section 1705(a)(1) of Title XVII and not for manufacturing, transmission or leading edge biofuels projects. The following non-exclusive list of potential types of Eligible Projects is provided for illustrative purposes only. Submission of an application supporting a project that fits within one or more of the illustrative project types set forth below does not assure that such Lender-Applicant will be selected for the issuance of a loan guarantee.

Wind facility

Closed-loop biomass facility

Open-loop biomass facility

Geothermal facility

Landfill gas facility

Trash-to-energy facility

Hydropower facility, including incremental hydropower

Solar facility

Construction Commencement

For purposes of this Solicitation, the term “commencement of construction” means, with respect to an Eligible Project under this Solicitation, that (i) the Borrower has completed all pre-construction engineering and design, has received all necessary licenses, permits and local and national environmental clearances, has engaged all contractors and ordered all essential equipment and supplies as, in each case, can reasonably be considered necessary so that physical construction of the Eligible Project may begin (or, if previously interrupted or suspended, resume) and proceed to completion without foreseeable interruption of material duration and (ii) such physical construction (including, at a minimum, excavation for foundations or the installation or erection of improvements) at the primary site of the Eligible Project has begun (or resumed). For projects to constitute Eligible Projects that commence

construction on or before September 30, 2011, new construction projects must commence construction, existing but postponed or interrupted construction projects must resume construction, 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 entering into a Loan Guarantee Agreement in connection with the project and must terminate any outstanding Loan Guarantee Agreement or Conditional Commitment, without any further obligation to the Lender-Applicant, the proposed Borrower or any Project Sponsor.**

To facilitate projects' compliance with the September 30, 2011 deadline, DOE shall also require, as a condition in the Conditional Commitment and Loan Guarantee Agreement to the first draw or advance under the Guaranteed Obligation, that the Borrower deliver to DOE and the Administrative Agent written certification on or before September 30, 2011 that the "commencement of construction" (as defined above) of the project has occurred. If such commencement of construction does not occur on or before September 30, 2011, DOE must (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 Lender-Applicant, the proposed Borrower or any Project Sponsor.

Projects that have completed construction are not eligible for a loan guarantee. DOE will not issue loan guarantees to support or refinance projects that have already been fully financed. If a project has begun construction before the issuance of a loan guarantee, it may be eligible for a loan guarantee unless it has received a commitment for post-construction financing before issuance of the loan guarantee. For example, a commitment for construction financing that, by its terms, converts to term financing upon the occurrence of expected events (such as the completion of construction) is considered a commitment for post-construction financing.

B. Eligible Applicants: An eligible applicant under this Solicitation includes any party meeting the definition of "Lender-Applicant" set forth in Section I.C above and seeking a loan guarantee under Section 1705 of Title XVII for an Eligible Project under this Solicitation.

C. Lenders and Holders: "Lender-Applicant" and "Lead Lender" are defined in Section I.C above. "Holder" is defined in Section 609.2 of Attachment G. In addition, Lead Lenders and Holders shall meet the requirements applicable to them in Attachment J.

D. Project Costs: Project costs under this Solicitation shall have the meaning ascribed to the term "Project Costs" in Sections 609.2 and 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 to a project will adversely impact the availability of appropriated funds under the Recovery Act to cover the Credit Subsidy Cost for that project. The Borrower will be required in the Loan Agreement to make representations and warranties, certifications, and covenants, 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 Davis Bacon Act regulations, including all requirements set forth in 29 CFR 5.5(a), as tailored in Attachment H for incorporation into Loan Agreements expected to be entered into under this Solicitation and incorporated by reference into the Davis Bacon provisions in Attachment I as if fully set forth therein. Borrowers are advised that in accordance with the Davis-Bacon Act and its implementing regulation at 29 CFR §1.6(g), the Davis Bacon obligations described above with respect to payment of wages at rates not less than those prevailing on similar work in the locality of the project to all laborers and mechanics employed in the performance of the project must be complied with beginning with the “construction, prosecution, completion or repair” (as defined in 29 CFR §5.2(j)) of such project, regardless of whether the closing of the DOE loan guarantee has occurred. An exception to such requirement is any case in which the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor (“DOL”) finds that there is no evidence of intent to apply for Federal funding or assistance prior to the start of construction. In addition, DOL has provided guidance on the retroactive application of the Davis Bacon Act to projects funded under the Recovery Act in All Agency Memorandum No. 207 dated May 29, 2009, a copy of which may be found at <http://www.dol.gov/esa/whd/recovery/AAM207.pdf>. The Borrower will also be required to insert the contract clauses in 29 CFR 5.5(a), as tailored in Attachment H, in all contracts, subcontracts and other agreements with entities (including the Project Sponsor and affiliates) 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), as tailored for this Solicitation, appears in Attachment H. Moreover, DOL’s wage determinations by county are available to agencies and the general public online at <http://www.wdol.gov>.

F. Recovery Act Reporting Requirements: Section 1512 of the Recovery Act requires extensive reporting from the prime recipients of Federal funding. Each such recipient is required to report, ten (10) days after the end of each calendar quarter, information relating to, among other things, numbers of jobs created and retained by the project. While OMB has issued interim guidance on these requirements in the OMB Implementing Guidance and at 2 CFR §176.40 to §176.50, the Government has not fully developed the implementing instructions of the Recovery Act, particularly with respect to such reporting. Lead Lenders and Borrowers will be required to comply with all requirements of the Recovery Act, Title XVII (excluding Section 1703), the OMB Implementing Guidance and this Solicitation, as well as any related DOE guidance, as any Loan Guarantee Agreement or Loan Agreement shall require. Lender-Applicants, prospective Borrowers and Project Sponsors should consult the DOE website, www.energy.gov, the Program Website, <http://www.lgprogram.energy.gov/>, the OMB website, http://www.whitehouse.gov/omb/memoranda_default/, and the Recovery Act website, www.recovery.gov, regularly to keep abreast of guidance and information as they evolve.

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

The Borrower and Lead Lender, as Administrative Agent on behalf of the Holders, shall at all times maintain such records as may be necessary, in the event DOE issues a written notice to such Borrower and Lead Lender, for each to undertake such reporting obligations under Section 1512 of the Recovery Act with respect to their respective organizations in accordance with the procedures and reporting items set out or otherwise referenced in 2 C.F.R. §176.40 to §176.50, the OMB Implementing Guidance and, in each case, any amendment, supplement or successor thereto.

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 in the OMB Implementing Guidance and at 2 CFR §176.60 to §176.170. Borrowers 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 Agreement with respect to that project will require compliance with this provision. Lender-Applicants, proposed Borrowers and Project Sponsors should consult the DOE website, www.energy.gov, the Program Website, <http://www.lgprogram.energy.gov/>, the OMB website, http://www.whitehouse.gov/omb/memoranda_default/, and the Recovery Act website, www.recovery.gov, regularly to keep abreast of guidance and information as they evolve.

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:** Lender-Applicants 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 by the Lender-Applicant in the proportionate amounts set forth in Attachment C upon the submission of Parts I and II of the application.
- 2) **Project Evaluation by DOE:** In evaluating Part I submissions, and consistent with Section IV.8.A, DOE will undertake a review of the proposed project's eligibility (subject to validation in the Part II submission), its readiness to proceed and commence construction, the qualifications of the Lender-Applicant as a Lead Lender and how the proposed funding plan complies with the objectives under this FIPP Solicitation, including the parameters set forth in Attachment A1, Section I.B.5. Dialogue between DOE and the Lender-Applicant and, as applicable, the proposed Borrower and the Project Sponsor is generally permitted in connection

with Part I submissions regarding the project to enable the Lender-Applicant to make a self-selecting decision as to whether to proceed with a Part II submission which, if filed, will be competitively evaluated against all other Part II submissions filed during the same round of Part II review. Based on the information provided by the Lender-Applicant in the Part II submission, a project evaluation report will be prepared.

- 3) **Term Sheet/Conditional Commitment**: At an appropriate point in the process after DOE has completed its review of the Part II submissions with respect to any given round of review as described in Section IV.2 below, DOE may provide the Lender-Applicant with a Term Sheet as described in Section 609.8 of Attachment G. Any such Term Sheet is expected to be based on the term sheet proposed by the Lender-Applicant in its Part II submission. 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 Lender-Applicant, in writing, of any DOE decision not to finalize a Term Sheet. If the Lender-Applicant and the proposed Borrower agree with and execute a final Term Sheet approved by the CRB, the Term Sheet becomes a Conditional Commitment between DOE, the Lender-Applicant, and the proposed Borrower, and at this time the Lender-Applicant must pay to DOE the proportion of the facility fee (or Second Fee) due 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) **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 Lender-Applicant satisfies all applicable requirements of Title XVII, including Section 1705, the Recovery Act, and this Solicitation, as well as all conditions precedent to closing (unless waived), DOE will pay the Credit Subsidy Cost, subject to the availability of funds, and the Lender-Applicant must pay at closing the remaining proportion of the facility fee (Second Fee) due while the Borrower must pay the maintenance fee (Third Fee), the first annual amount of which is due at closing, in each case, as such fees are 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, and as certified by the Borrower, 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 Lender-Applicants to submit timely information in sufficient detail to support DOE's evaluation of the Lender-Applicant's analysis of the project's compliance with the objectives and requirements established by all applicable portions of Title XVII, including Section 1705, the Recovery Act, and this Solicitation, as well as the rigorous underwriting criteria appropriate for projects of this scale. Lender-Applicants must satisfy the "Finance Considerations for Applications" set forth in Section I.D. above, including demonstrating that there is a reasonable prospect of repaying the principal and interest of the Guaranteed Obligation and any other project debt.
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, the Recovery Act and 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 and its creditworthiness, project eligibility, financing strategy and compliance of the proposed funding plan with the objectives and parameters of this FIPP Solicitation, progression to date in critical path activities and schedules and readiness to proceed and commence construction, as well as the Lender-Applicant's eligibility to be a Lead Lender as required in Attachment J. 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 review of the Application. 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 Part I submission may be filed at any time prior to the Lender-Applicant's filing of its Part II submission. Payment for the initial 25% of the application fee must be paid by the Lender-Applicant contemporaneously with the Lender-Applicant's Part I submission. The application fee is non-refundable. See Attachment F for details on communication procedures. DOE will notify the Lender-Applicant regarding its Part I submission as described in Section IV.8 below. A Lender-Applicant may only file a Part II submission after it has received such notification from DOE with respect to its Part I submission.

As set forth in Section IV.6 below, there will be ten 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 incomplete application submitted in such round to a subsequent round of review. The Part II submission may be filed at any time (subject to the Part II submission due dates set forth in Section IV.6 below) after DOE's notification to the Lender-Applicant regarding its Part I submission as described in Section IV.8 below. Accordingly, Part II submissions may be filed no later than 11:59 pm 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 11:59 pm ET on January 6, 2011, the due date for the final round of Part II submissions. The remaining 75% of the application fee must be paid by the Lender-Applicant contemporaneously with the Lender-Applicant's filing of its Part II submission. None of the application fee is refundable.

DOE may request additional information to clarify information submitted by Lender-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. **Questions:** To the extent a Lender-Applicant has questions relating to the application process or seeking clarification about program requirements and DOE practices under this Solicitation at any time prior to the filing of its Part II submission, the Lender-Applicant may set forth its question in an e-mail to DOE at DOEloanquestions@USAEA-Connect.com. Please include in the subject line "RE CMCL TECH RENEW Solicitation Question" and a few words identifying the topic of the question. DOE will respond to such questions as appropriate and may make public the most frequently asked questions, along with DOE's responses thereto, for example, by posting on the Program Website, <http://www.lgprogram.energy.gov/>, or on FedConnect. Questions about registering with, or the operation of, FedConnect may be submitted to the FedConnect support team at support@fedconnect.net. If DOE decides to begin negotiations with a Lender-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 with the Lender-Applicant.
4. **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. Lender-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, A2 and I. As more fully described in Section VI below, 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. For Part II submissions that are incomplete, DOE may permit the Lender-Applicant to complete the submission for evaluation during a subsequent round of Part II reviews, if any. During each round of Part II reviews, communications from Lender-Applicants to DOE are generally not permitted with regard to an application, except in instances when the Lender-Applicant is required to respond to DOE's notification to such applicant, the Lender-Applicant is seeking administrative assistance, or the Lender-Applicant is notifying DOE through the DOE agent as set forth in Section 2 of Attachment F of material changes to its Part II submission as it is required to pursuant to Section V.7 of this Solicitation. See Attachment F for DOE's designated point of contact for all such administrative questions. As more fully described in Section IV.5 below, selection of projects for the offering of a Term Sheet will be made after the closing of each round of Part II review.
5. **Self-Selection:** DOE's assessments of the Part I submissions will provide Lender-Applicants information to assist in their deciding 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 notify Lender-Applicants as to whether they qualify as Lead Lenders under Attachment J and to identify and accelerate the review of projects with substantial progress, readiness to proceed or

likelihood to commence construction by September 30, 2011, including a determination of the level of NEPA (as defined below) review/approval required and of the likelihood of the project's completing the NEPA review process by such date and that the funding plans are expected to comply with the objectives and parameters of this FIPP Solicitation, including the parameters set forth in Attachment A1, I.B.5 (subject to further validation in the Part II submission). Each of the foregoing items are expected to be well documented in the Part I submission.

If a Lender-Applicant decides to proceed with a Part II submission, the Lender-Applicant must update the information provided in its Part I submission and make a substantially complete Part II submission not later than 11:59 pm 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 11:59 pm ET on January 6, 2011, the due date for the final round of Part II submissions.

6. **Initial Selection for Term Sheet/Conditional Commitment:** DOE will evaluate substantially completed applications, including each of the Part I and Part II submissions, based upon the evaluation factors (as set forth in Section IV.7 below), after each Part II submission due date identified in Section IV.6 below. At any time following the due date for any particular round of Part II submissions, DOE may approve, for purposes of offering a Term Sheet, the selection of Lender-Applicants and proposed projects meeting the objectives of applicable portions of Title XVII, including Section 1705, the Recovery Act, and this Solicitation, as well as DOE's underwriting guidelines. DOE shall endeavor to review each Part II submission and inform each Lender-Applicants of its decision within two months from the applicable submission due date.
7. **Summary of Application Schedule:** The following table summarizes the application schedule:

Part I Submissions

Part I submissions may be filed at any time prior to the filing of a Part II submission and will be reviewed on a continuous basis. In accordance with Section IV.8 below, each Lender-Applicant will be notified by DOE as to whether it may proceed with the filing of a Part II submission.

Part II Submission Due Dates

November 23, 2009
January 7, 2010
February 22, 2010
April 8, 2010
May 24, 2010
July 8, 2010
August 23, 2010
October 7, 2010
November 22, 2010
January 6, 2011

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. Lender-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. See Attachment F for details on communications procedures.

8. **Application Evaluation:**

A. Part I Submission Evaluation

Upon receipt of a Part I submission, DOE will conduct a review for purposes of (i) ascertaining its responsiveness with respect to the Threshold Determinations set forth in Section II above and completeness of information supplied in accordance with the instructions in Attachment A1 and the requirements of this Solicitation, (ii) determining whether the Lender-Applicant meets the requirements of a Lead Lender as set forth in Attachment J to the Solicitation, (iii) evaluating whether the proposed project constitutes an Eligible Project, subject to validation during DOE’s review of the Part II submission, (iv) assessing the project’s readiness to proceed or likelihood to commence construction on or before September 30, 2011, including a determination of the level of review/approval required under the National Environmental Policy Act (“NEPA”) and of the likelihood of the project’s completing the NEPA review process by such date, and (v) a preliminary assessment of whether the proposed project is expected to meet the objectives and parameters of this FIPP Solicitation, including the parameters set forth in Attachment A1, Section I.B.5 (subject to further validation in the Part II submission). DOE will notify each Lender-Applicant in writing as to its assessment of the above listed considerations.

B. Part II Submission Evaluation

Upon receipt by DOE of a Part II submission after DOE notifies the applicant regarding its Part I submission, DOE will conduct an evaluation of the Part I submissions, together with substantially complete Part II submissions, based on the evaluation criteria, in accordance with the weightings set forth below. Part II submissions will be reviewed based on the factors listed in Section 609.7 of Attachment G and the following review criteria:

Review Criteria

Factors	Detail	Weighting
Programmatic	Readiness of project for financing/likely speed to closing; size of project; simplicity of project and financing structures; legal and regulatory factors.	35%
Creditworthiness	The financial strength of the project, with special emphasis on security of revenues and expenses.	45%
Financing and Funding Plan	The ability of the Lender-Applicant and the proposed Holders to successfully execute the financing plan and funding plan for the Guaranteed Obligation.	20%

Factors	Detail	Weighting
Total		100%

Programmatic Review (35%)

The Application will be evaluated in terms of the project’s ability to serve the programmatic purposes of the Recovery Act, which will be advanced by factors including (a) the likelihood of a project to reach close financing and commence construction sooner rather than later but in no event later than September 30, 2011, (b) how large the investment is in the project, (c) the simplicity of the project’s financing structures, reflecting a greater likelihood of success, and (d) risks from potential legal and regulatory issues that could jeopardize the success of the project, such as intervenors, permitting and public acceptance, taking into account any offsetting mitigation factors or plan.

Creditworthiness Review (45%)

DOE will consider the proposed project’s capacity to provide a reasonable prospect of repayment (the economic viability of the project without the DOE loan guarantee, its ability to generate sufficient cash flow to service the proposed Borrower’s debt obligations over the life of the loan guarantee, etc.) and the availability of other Federal and State incentives other than the DOE loan guarantee. DOE also will consider Project Sponsor capability, financial commitment to the project and financial strength, as well as the credibility of the business and financial plans and market factors that could significantly influence the success of the project. This will include consideration of technical, construction and operations issues. In evaluating the risk of cost overruns, DOE will consider whether the Guaranteed Obligation, together with amounts available to the project from other sources, will be sufficient to complete the project.

Financing and Funding Plan Review (20%)

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. DOE will consider the extent to which the proposed project meets the objectives under this FIPP Solicitation, including the parameters set forth in Attachment A1, Section I.B.5, such as the extent to which the “buy and hold” intention of the Holders meeting the qualifications set forth in Attachment J is co-aligned with DOE’s long-term risk exposure under the Guaranteed Obligation; the soundness of the financing plan and the ability of the Lender-Applicant to execute the financing plan with respect to the tenor relative to the useful life of the project; the term of key offtake and supply contracts; the similarity to financing plans used for similar projects that have been successfully executed; the availability of funds from the intended sources of project debt and equity; and the Lender-Applicant's experience in executing similar financing plans. DOE will similarly consider the ability of the various sources of project debt and equity to fund their commitments. Applications that contemplate second-lien financing will be disfavored.

9. **Independent Consultants and Outside Counsel to DOE:**

Lender-Applicants, proposed Borrowers and Project Sponsors are advised that, consistent with market practice in financings, the proposed Borrower or a Project Sponsor (each a “responsible

party”) shall be responsible for paying the fees and expenses of any independent consultants and outside legal counsel engaged by DOE in connection with Lender-Applicant’s application under all circumstances, without recourse to DOE by the consultant, counsel, Project Sponsor, Borrower, Lender-Applicant or any Holder. DOE does not currently plan to utilize independent consultants and outside legal counsel for due diligence, underwriting, negotiation, documentation, operations and other aspects of the loan guarantee process under this Solicitation, but it reserves the right to do so. Nevertheless, 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 and require the proposed Borrower or Project Sponsor to pay the fees and expenses of such independent consultants or outside counsel. Upon making such determination, DOE shall proceed in evaluating and processing an application only upon the responsible party’s entering into a payment agreement with each such consultant or outside counsel engaged by DOE to provide services to DOE on the Lender-Applicant’s application. Such payment agreements are subject to review and approval by DOE and shall be executed by a responsible party of creditworthiness acceptable to such consultant or counsel prior to any work being performed by the consultant or outside counsel. In the event that the responsible party fails to comply with the provisions of such payment agreement, DOE may stop work on the application and/or reject an application. DOE shall not be financially liable to such independent consultant or outside legal counsel for any services rendered or expenses incurred in connection with a Lender-Applicant’s application under any circumstances whatsoever, including whether an application is approved or a closing occurs or under circumstances in which the responsible party fails to pay such fees and expenses. The payment agreements shall require that the responsible party make periodic payments to 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, if any, shall submit to the responsible party periodic invoices for services rendered to DOE with respect to the Lender-Applicant’s application. Prior to submission of any invoice to a responsible party, 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. The responsible party shall acknowledge and pay all fees and expenses represented by such invoices upon their periodic presentation thereof, including prior to or at closing (if any).

Lender-Applicants, proposed Borrowers and Project Sponsors are advised that while such services shall be rendered for the benefit of DOE in connection with a Lender-Applicant’s application, the invoices of DOE’s independent consultants and outside counsel working on a Lender-Applicant’s application will be the sole responsibility of such responsible party, notwithstanding that DOE is the client of such independent consultants and outside counsel. Each Lender-Applicant, proposed Borrower and Project Sponsor must specifically disclaim any inference of confidential, fiduciary or other client relationship (including an attorney-client relationship) between such Lender-Applicant, proposed Borrower or 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.

10. **Non-Selection and Future Consideration:** Pursuant to Section 609.7(d) of Attachment G, Lender-Applicants with whom DOE decides not to proceed with offering a Term Sheet will be informed in writing of the reason for DOE's decision not to proceed with the Application. This determination by DOE shall be final and non-appealable, with respect to any given round of Part II review, but will not prejudice the Lender-Applicant from (i) filing Part I and Part II submissions for different projects under this Solicitation, along with payment of an Application fee in respect of such new submissions, if the submission due dates have not expired under this Solicitation, or (ii) applying under a future solicitation under which it is eligible to apply.
11. **Multiple Applications:** More than one application may be submitted by a Lender-Applicant.

V. **Application Submission Requirements**

1. **Documentation:** Complete applications must meet all applicable requirements of Title XVII, including Section 1705, the Recovery Act and this Solicitation. DOE expects that the financing documentation between the Lender-Applicant and the proposed Borrower with respect to the proposed project will be typical of an arm's-length, commercially negotiated project financing, or corporate financing that meets the objectives of Title XVII, and will include the required terms set forth in Attachment I.
2. **Electronic Submission of Applications:** 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 Lender-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, with all information fields completed for the Lender-Applicant, any other Holder, the proposed Borrower and Project Sponsor. While the Part I submission through FedConnect shall serve as the official version sent to DOE, each Lender-Applicant is also required to send its Part I submission on a CD-ROM to the address listed in Attachment F, Section 2, by express mail which should arrive no later than two (2) business days after the date on which the Lender-Applicant filed its Part I submission on FedConnect. 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 as the Lender-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 the Lender-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 Lender-Applicant wishes its application to receive DOE consideration. Lender-Applicants must submit their applications in accordance with the instructions contained herein and in Attachments A1, A2 and I.

Further, it is the responsibility of the Lender-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, and/or for purposes of complying with applicable federal laws or reporting required by DOE, Lender-Applicants and proposed Borrowers 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.

Lender-Applicants and proposed Borrowers are highly encouraged to allow at least 21 days to complete the above listed steps. When completed, Lender-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, Lender-Applicants and proposed Borrowers should contact the FedConnect support team at support@fedconnect.net.

4. **Part I Application Submissions:** Part I 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 Lender-Applicant, signed by an authorized representative, stating that the Lender-Applicant intends to pursue a loan guarantee to close and to submit a Part II submission, indicating the planned due date for the particular round of Part II reviews as set forth in Section IV.6 above in which the Lender-Applicant wishes its project to receive DOE consideration. See Attachment E.
 - A copy of Lender-Applicant’s Part I submission on a CD-ROM sent to the address listed in Attachment F, Section 2, by express mail for arrival no later than two (2) business days after the date on which the Lender-Applicant filed its Part I submission by FedConnect.
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 Lender-Applicant wishes its project to receive DOE consideration. While the Part II submission through FedConnect shall serve as the official version sent to DOE, each Lender-Applicant is also required to send its Part II submission on a CD-ROM to the address listed in Attachment F, Section 2, which should arrive by express mail no later than two (2) business days after the applicable due date by which the Lender-Applicant filed its Part II submission 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:** The information submitted should include the Lender-Applicant’s best estimate of the timing of completion of the project, recognizing that final terms and conditions cannot be

presented to the CRB until all project elements have been finalized. Lender-Applicants may be asked to provide additional information during DOE's review of the application. If there are material changes to the project after the original Part II submission is filed, the Lender-Applicant must promptly provide written notice of such change, but in no event later than three (3) business days after such change, and shall provide any updated information no later than ten (10) business days after such notice, in each case, to DOE's agent through the communications channels specified in Section 2 of Attachment F.

VI. Evaluation: Review of Project and Financing Plan of Guaranteed Obligation

DOE will review Part II submissions but cannot conclude its review of an Application 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 Lender-Applicant must submit to DOE updated project and financing information reflecting the modifications, which may in turn require resubmission to, and reconsideration by, the CRB. As such, to the greatest extent possible, Lender-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 review of an application, DOE may utilize the services of independent engineering, technical, financial and marketing consultants and outside counsel. Consistent with market practice in financings, the proposed Borrower or Project Sponsor shall be responsible for paying the fees and expenses of DOE's independent consultants and outside legal counsel, if any, in connection with the proposed project under all circumstances, without recourse to DOE by such consultant, counsel, Project Sponsor, Borrower, Lender-Applicant and/or any Holder. However, the cost of these services incurred through financial closing may be included in the calculation of total Project Costs to the extent permitted by Section 609.12 of Attachment G.

DOE expects the Lender-Applicant to have undertaken steps 1-8 below in the Lender-Applicant's analysis of the proposed project as if the Guaranteed Obligation were not partially guaranteed, while also following the Lender-Applicant's own standard internal credit policies and procedures for comparable senior debt transactions. Accordingly, DOE's review will primarily focus on an examination and confirmation of the credit analysis included in the application, as well as a review to satisfy itself that all requirements under Title XVII (excluding Section 1703), the Recovery Act and this Solicitation are met. Nonetheless, DOE reserves the right to request any additional information and perform any analyses that it deems necessary or appropriate.

1. **Evaluate Financing Plan:** This involves a thorough review of the sources and uses of funds. 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 the financing requirements of Title XVII, including Section 1702 and this Solicitation;
 - Assessment of the adequacy of proposed contingency and reserve funding; and
 - Evaluation of the Guaranteed Obligation financing plan, as well as the plan for funding each part of the Guaranteed Obligation, presented by the Lender-Applicant in accordance with Attachment A2 with regard to (1) the general criteria specified therein, (2) the specific facts and circumstances of the proposed project and its financial structure and (3) the extent to which the proposed project meets the objectives under this FIPP Solicitation, including the parameters set forth in Attachment A1, Section I.B.5, such as the extent to which the “buy and hold” intention of the Holders meeting the qualifications set forth in Attachment J is co-aligned with DOE’s long-term risk exposure under the Guaranteed Obligation.
2. **Assess Financial Viability:** Based on the financing plans submitted with the application and updates, and projections for future financial performance, the Lender-Applicant is expected to assess the financial viability of the project with specific emphasis on the proposed Borrower’s expected ability to repay the principal and interest on the Guaranteed Obligation and any other project debt. 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:** The Lender-Applicant is expected to conduct a thorough review of the engineering report described in Attachment A2, including consideration of factors such as environmental impact and infrastructure requirements. Each Lender-Applicant should be as comprehensive as possible in obtaining the advice and services of an independent engineer. Determination of the technical merit of the project will be influenced by the quality of the engineering report, including the professional credentials of the consultant, scope of the undertaking, and strength of the opinions provided.
 4. **Review Project Legal Structure:** The Lender-Applicant is expected to examine the project’s legal structure. This should 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 counterparties of interest. Additionally, a legal review is expected to include an analysis of the intellectual property rights of participants in the project to ensure that the project has access to, and can use all of, the proposed technology necessary to be employed in the project.
 5. **Evaluate Project Risks:** The Lender-Applicant is expected to 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. Among other things, the Lender-Applicant's calculations must, pursuant to Section 1705(c) of Title XVII, take into account the cost of the proposed Borrower's 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. The model must be available to DOE so that it can examine sensitivities itself where appropriate.
7. **Assess Strengths and Weakness of Project Sponsors:** The Lender-Applicant is expected to 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 construction management and operation of the proposed project.
8. **Analyze Proposed Collateral:** The Lender-Applicant is expected to examine the value of the collateral in detail, particularly under default scenarios. This evaluation will be based on, among other things, the nature of the collateral pledged, appraiser reports, and expected cash availability under a default scenario. The Lender-Applicant 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 Lender-Applicant and any other collateral holders and shall be subject to the approval of the Secretary at or prior to the closing.
9. **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 Lender-Applicant must pay to DOE 20% of 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.
10. **Conditional Commitment:** In accordance with Section 609.8 of Attachment G, a Conditional Commitment, if entered into by a Lender-Applicant, the proposed Borrower and DOE upon acceptance of the Term Sheet by the Lender-Applicant and the proposed Borrower, 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, the Recovery Act, and this Solicitation, the Lender-Applicant pays the 80% balance of the facility fee (or Second Fee) and the Borrower pays the non-refundable maintenance fee (or Third Fee), in each case, as set forth in Attachment C.

The general closing process and requirements are described in Section 609.9 of Attachment G. A letter from a nationally recognized rating agency indicating the most recent private credit rating of the Project (if project financed) or, if corporate financed, the corporate credit rating of the Borrower, in each case, without giving effect to the DOE loan guarantee or any other credit support which would not be available to DOE, must be provided. Such credit rating, if the Project is project financed, must be confirmed or updated or if the Project is corporate financed, must include any material effect of the transaction, including the new debt from the Project, on such corporate credit rating and, in each case, must be delivered to DOE no later than 30 days prior to closing. DOE will consider this information in its final calculation of the Credit Subsidy Cost.

VIII. Administrative Costs of Issuing a Loan Guarantee, Credit Subsidy Cost, Extraordinary Expenses and Other DOE Agents’ Fees

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 Lender-Applicants or Borrowers, as the case may be, 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 by the Lender-Applicant to DOE with the Lender-Applicant’s submission of Part I of its application. The balance of seventy-five percent (75%) of the aggregate application fee is due when the Lender-Applicant’s Part II submission is made to DOE.

- **Facility Fee:** Twenty percent (20%) of the facility fee (or Second Fee) is due and payable by the Lender-Applicant upon the execution by the Lender-Applicant and proposed Borrower of the Term Sheet approved by the CRB. The balance of eighty percent (80%) of the facility fee is due and payable by the Lender-Applicant at or prior to the financial closing and execution of the Loan Guarantee Agreement.
 - **Maintenance Fee:** The maintenance fee (or Third Fee) is payable by the Borrower 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 \$10,000 to \$25,000 per year and shall be payable each year in advance, commencing upon the closing date of the Loan Guarantee Agreement, in the amount specified in the Loan Guarantee Agreement.
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 Lender-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, the Recovery Act, and this Solicitation and which are selected for a loan guarantee. 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 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, DOE shall be entitled to payment in full from the Borrower of such additional internal administrative costs and of related fees and expenses of its independent consultants and outside counsel, if any, and Master Servicer, to the extent that such third parties are not paid directly by the Borrower or a Project Sponsor.
 4. **Other DOE Agents' Fees.** Lender-Applicants, proposed Borrowers and Project Sponsors are advised that the Borrower shall be responsible for paying the fees and expenses of any agent, such as the Master Servicer described in Attachment K, that is engaged by DOE in connection with Borrower's project under all circumstances. The Borrower will have certain special reporting obligations to DOE and its Master Servicer as described in Attachment I in respect of the proposed project. Moreover, Lead Lenders, as Administrative Agents for Guaranteed Obligations will have reporting obligations to DOE and the Master Servicer that are customarily undertaken by Administrative Agents in project financings contemplated under this Solicitation. As such, the Borrower shall be responsible for paying the fees and expenses of DOE's Master Servicer that are incurred in connection with its specific project pursuant to a fee

agreement (substantially in the form to be posted on the Program Website in due course) to be entered into at closing between the Borrower and the Master Servicer.

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, application stage or during any negotiations. No binding commitment, agreement, obligation, or right of any kind may be assumed or enforced by any Lender-Applicant, proposed Borrower 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 Lender-Applicant, the proposed Borrower and/or the Project Sponsor, 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 Lender-Applicant specifically identifies and marks its own such data, and such data of the proposed Borrower and/or any Project Sponsor, with their assistance in so identifying and marking, in accordance with the following:

- a. Lender-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 Lender-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 Lender-Applicant, the proposed Borrower and/or any Project Sponsor.”

- b. Lender-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 Lender-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 Lender-Applicant, the proposed Borrower and/or any Project Sponsor.”

- c. Lender-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 Lender-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, <http://www.lgprogram.energy.gov/>:

- (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) Supplemental Appropriations Act for the Consumer Assistance to Recycle and Save Program, 2009, Pub. L. No. 111-47 (August 7, 2009)
- (d) The Office of Management and Budget’s Initial Implementing Guidance for the Recovery Act. See M-09-10 (February 18, 2009) located at http://www.whitehouse.gov/omb/assets/memoranda_fy2009/m09-10.pdf

- (e) OMB's 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
- (f) 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
- (g) 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
- (h) 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>
- (i) Selecting Davis Bacon Act Wage Decisions located at <http://www.wdol.gov/dba.aspx#0>
- (j) U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, All Agency Memorandum No. 207 dated May 29, 2009 located at <http://www.dol.gov/esa/whd/recovery/AAM207.pdf>.
- (k) The Recovery Act website at www.recovery.gov

Attachment A1

Requirements for Part I Application Submission

**UNITED STATES
DEPARTMENT OF ENERGY**

**APPLICATION INSTRUCTIONS FOR COMMERCIAL TECHNOLOGY RENEWABLE
ENERGY GENERATION PROJECTS
Financial Institution Partnership Program Under Section 1705 of Title XVII**

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. Section 1705 of Title XVII authorizes the Secretary of Energy (“Secretary”) to issue loan guarantees only for certain categories of projects that commence construction no later than September 30, 2011. DOE will use the information submitted by Lender-Applicants to evaluate and select projects for loan guarantees to be issued under Section 1705 of Title XVII. Lender-Applicants may be asked to provide additional information during DOE’s review of the application. If there are material changes to the project after the original Part II application submission is filed, the Lender-Applicant must promptly provide written notice of such change, but in no event later than three (3) business days after such change, and shall provide any updated information no later than ten (10) business days after such notice, in each case, to DOE’s agent through the communications channels specified in Section 2 of Attachment F.

Application Fee A non-refundable application fee of \$50,000 must be paid to DOE with the submission of the application, \$12,500 of which is payable by the Lender-Applicant upon the submission of Part I of the application and the remaining \$37,500 of which is payable by the Lender-Applicant 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 The Lender-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 – Information Memorandum and Due Diligence Information Requirements
2. Each part is organized into several 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 / 2 / Potential Environmental Impacts (for this example see Technical Information: Section C – Part I below).

4. Each data change or correction requires a complete new date 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 submissions 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 by the Lender-Applicant 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. 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. Lender-Applicants are encouraged to submit the application form as soon as practical after receipt of the solicitation and shall complete the form with the required information fields for itself and any proposed Holders known at the time of the Part I submission, for the proposed Borrower and for the Project Sponsor. Other supporting documentation can be submitted through FedConnect at a later date as long as all required information for Part II is submitted within the due dates for Part II rounds of review as set forth in Section IV.6 of the Solicitation. While the Part I submission through FedConnect shall serve as the official version sent to DOE, Lender-Applicants are also required to send its Part I submission on a CD-ROM to the address listed in Attachment F, Section 2, by express mail for arrival no later than two (2) business days after such Part I submission was filed through FedConnect.

C. A letter of commitment from the Lender-Applicant, signed by an authorized representative, in the form of Attachment E stating that the Lender-Applicant intends to pursue a loan guarantee under Title XVII to close and file a Part II submission, indicating the planned due date for the particular round of Part II reviews, as set forth in Section IV.6 of the Solicitation, in which the Lender-Applicant wishes its project to receive DOE consideration and a date by which the Lender-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 11:59 pm 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 Lender-Applicant wishes its project to receive DOE consideration. While the Part II submission through FedConnect shall serve as the official version sent to DOE, Lender-Applicants are also required to send its Part II submission on a CD-ROM to the address listed in Attachment F, Section 2, which should arrive by express mail no later than two (2) business days after the applicable due date by which Lender-Applicant filed its Part II submission 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.) Lender-Applicants are also required to submit their Part I and Part II submissions on CD-ROMS by express mail at the address listed in Attachment F, Section 2, which should arrive no later than two (2) business days after the date on which Lender-Applicant filed its Part I and Part II submissions by FedConnect.

Registrations: In submitting applications through FedConnect, and/or for purposes of complying with all applicable federal laws or reporting required by DOE, Lender-Applicants and proposed Borrowers 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.

Lender-Applicants and proposed Borrowers 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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3. Borrower and Project Sponsors
4. Lender-Applicant Point of Contact Information

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2. Project Eligibility
3. Project Sponsors' Capabilities
4. Project Costs
5. FIPP Objectives

Section C: Technical Information

1. Potential Environmental Impacts

Section D: Business Plan

1. Summary Business Plan
2. Summary Financing Plan

Section E: Application Certifications

1. Lobbying, Debarment and Related Certifications and Assurances

Application Information: Section A – Part I

1. **Project Name:** Assign a short project name for purposes of identification.
2. **Lender-Applicant Qualification Statement:** Submit a certification and evidence that the Lender-Applicant meets all of the requirements of Section 609.11(a) of Attachment G as set forth in Section 2 of Attachment J, in order to qualify as a Lead Lender under this Solicitation.
3. **Borrower and Project Sponsor(s):** Identify and briefly describe the proposed Borrower and all Project Sponsors and provide their websites, if any.
4. **Lender-Applicant Point of Contact Information:** Provide the mailing address of the Lender-Applicant and the phone, fax and e-mail address of the Lender-Applicant's point of contact for DOE with regard to this application.

NOTE: To the extent that the Lender-Applicant has material in another format, such as a draft Information Memorandum, that provides the information required by Attachment A1 for the Part I submission, such material may substitute and be provided in lieu of specific responses to Attachment A1, so long as the Part I submission includes cross-references to specific marked sections and page numbers of such substitute material.

Project Description: Section B – Part I

1. **Executive Summary:** Provide a description of the nature and scope of the proposed project including the technology, site, purpose, design features and capacity. Include your target dates to close a loan guarantee, to commence site preparation and construction, for grid connection and for commercial operation.
2. **Project Eligibility:** Provide a brief explanation of :
 - a. How and to what extent the proposed project qualifies as a renewable energy system, including incremental hydropower, that is located in the United States and that generates electricity or thermal energy by using Commercial Technology (as defined in Section 609.2 of Attachment G)
 - b. Identify the technology to be employed in the project, as well as how, and the extent to which, it will be employed in the project. Explain how such technology constitutes a Commercial Technology (as defined in Section 609.2 of Attachment G), describing whether the proposed technology has been installed in and is being used in three or more commercial projects anywhere in the same or substantially similar general application as in the proposed project and has been in operation in such commercial project for a period of at least two years.

Such two-year period shall be measured, for each commercial project employing that particular technology, starting on the in-service date of such commercial project. For purposes of this definition, "commercial projects" include such projects for which a loan guarantee has been issued under Title XVII or otherwise.
 - c. The likelihood that the project will commence construction on or before September 30, 2011, and the basis for that conclusion, including a summary of critical path activities and schedules, such as licensing or regulatory permits and approvals, site preparation and long lead procurements.
3. **Project Sponsors' Capabilities:** Describe each Project Sponsor's capabilities, financial strengths and proposed investment in the project, as well as the project's strategic significance to each Project Sponsor.
4. **Project Costs:** Provide the estimated total cost of the project and summary breakdown of the key elements of the project cost.
5. **FIPP Objectives:** The extent to which the proposed project meets the objectives for this FIPP Solicitation in accordance with the following parameters:
 - (a) the Guaranteed Obligation is fundamentally structured as a fully private, market-based project or corporate finance loan and is expected to achieve a credit rating from a nationally recognized rating agency of at least a credit rating equivalent of 'BB' from Standard & Poor's or Fitch or 'Ba2' from Moody's, as evaluated without the benefit of any DOE loan guarantee or any other credit support which would not be available to DOE;

- (b) the Guaranteed Obligation is meant to be funded as efficiently as possible in accordance with Attachment I, in order to maximize the benefit of the DOE loan guarantee to the project;
- (c) the Guaranteed Obligation is to be underwritten by, or placed in a primary syndication with, Holders meeting the qualifications set forth in Attachment J and having a “buy and hold” intention that is co-aligned with the DOE's long-term risk exposure under the Guaranteed Obligation; and
- (d) the overall plan for the structure of the Guaranteed Obligation and its funding are transparent, simple and have a high degree of certainty in execution.

Technical Information: Section C – Part I

1. **Potential Environmental Impacts:** 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 environmental assessment (“EA”) or environmental impact statement (“EIS”).

The Part I submission 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 EA or EIS is required). The Lender-Applicant must submit a report containing an analysis of the potential environmental impacts of the project in sufficient detail to enable DOE to assess the significance of the impacts. Details of required environmental information are contained in Attachment B, NEPA Guidance.

Business Plan: Section D – Part I

1. **Summary Business Plan:** Provide a summary description of the following elements of the proposed Borrower's business plan:
 - a. Market analysis
 - b. Construction plan
 - c. Operations & maintenance plan
 - d. Project offtake
 - e. Fuel supply (if applicable)

2. **Summary Financing Plan:** Briefly describe the following elements of the proposed financing plan:
 - a. The timing and amount of funding and repayment of expected debt funding
 - b. The funding of expected equity investments
 - c. Any funding in anticipation of a cash grant under Section 1603 of the Recovery Act and anticipated uses of such cash grant, if received
 - d. Preliminary term sheet for the Guaranteed Obligation (including the specified terms and conditions required under Attachment I)
 - e. Preliminary funding plan for the Guaranteed Obligation
 - f. 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

Application Certifications: Section E – Part I

1. **Lobbying, Debarment and Related Certifications and Assurances:** In submitting an application for a loan guarantee under Title XVII, Lender-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 Lender-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 COMMERCIAL TECHNOLOGY RENEWABLE
ENERGY GENERATION PROJECTS**

Financial Institution Partnership Program Under Section 1705 of Title XVII

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. Section 1705 of Title XVII authorizes the Secretary of Energy (“Secretary”) to issue loan guarantees only for certain categories of projects that commence construction no later than September 30, 2011. DOE will use the information submitted by Lender-Applicants to evaluate and select projects for loan guarantees to be issued under Section 1705 of Title XVII. Lender-Applicants may be asked to provide additional information during DOE’s review of the application. If there are material changes to the project after the original Part II application submission is filed, the Lender-Applicant must promptly provide written notice of such change, but in no event later than three (3) business days after such change, and shall provide any updated information no later than ten (10) business days after such notice to DOE’s agent through the communications channels listed in Section 2 of Attachment F.

Application Fee A non-refundable application fee of \$50,000 must be paid to DOE with the submission of the application, \$12,500 of which is payable by the Lender-Applicant upon the submission of Part I of the application and the remaining \$37,500 of which is payable by the Lender-Applicant 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 The Lender-Applicant must provide all requested information in the following format:

1. The application is divided into two parts:
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Example: Project XXX /I /C / 2 / Potential Environmental Impacts (for this example see Technical Information: Section C – Part I below).

4. Each data change or correction requires a complete new date 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.
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A. Initial portion (25%) of the application fee payable by the Lender-Applicant 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. 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. Lender-Applicants are encouraged to submit the application form as soon as practical after receipt of the solicitation and shall complete the form with the required information fields for itself and any proposed Holders known at the time of the Part I submission, for the proposed Borrower and for the Project Sponsor. Other supporting documentation can be submitted through FedConnect at a later date as long as all required information for Part II is submitted within the due dates for Part II rounds of review as set forth in Section IV.6 of the Solicitation. While the Part I submission through FedConnect shall serve as the official version sent to DOE, Lender-Applicants are also required to send its Part I submission on a CD-ROM to the address listed in Attachment F, Section 2, by express mail for arrival no later than two (2) business days after such Part I submission was filed through FedConnect.

C. A letter of commitment from the Lender-Applicant, signed by an authorized representative, in the form of Attachment E stating that the Lender-Applicant intends to pursue a loan guarantee under Title XVII to close and file a Part II submission, indicating the planned due date for the particular round of Part II reviews as set forth in Section IV.6 of the Solicitation, in which the Lender-Applicant wishes its project to receive DOE consideration and a date by which the Lender-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 by the Lender-Applicant when the Part II submission is provided to DOE but in no event later than 11:59 pm 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 Lender-Applicant wishes its project to receive DOE consideration. While the Part II submission through FedConnect shall serve as the official version sent to DOE, Lender-Applicants are also required to send its Part II submission on a CD-Rom to the address listed in Attachment F, Section 2, which should arrive by express mail no later than two (2) business days after the applicable due date by which Lender-Applicant filed its Part II submission 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.) Lender-Applicants are also required to submit their Part I and Part II submissions on CD-ROMS by express mail at the address listed in Attachment F, Section 2, which should arrive no later than two (2) business days after the date on which Lender-Applicant filed its Part I and Part II submissions by FedConnect.

Registrations: In submitting applications through FedConnect, and/or for purposes of complying with all applicable federal laws or reporting required by DOE, Lender-Applicants and proposed Borrowers 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.

Lender-Applicants and proposed Borrowers 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: 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 the Part I submission, 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. **Project Participants:** Provide a list of principal project parties (prospective Holders, prospective Borrower, Project Sponsor(s), EPC contractor, principal vendors, principal offtake contractors, etc.), including their functions and contact information, including name of each contact person (first, middle and last), Position/Title, Phone Number, Fax Number, E-mail Address, Street Address, City, State, 9 Digit Zip code.
3. **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.
4. **Evidence of Authority:** Submit evidence that the signatory of the application has full authority to bind the Lender-Applicant 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 Lender-Applicant.
5. **Lender-Applicant Validation Statement:** Provide a written statement that based on the project information provided for DOE’s consideration of issuance of a loan guarantee, the Lender-Applicant attests that there is a reasonable prospect that 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.
6. **Lender-Applicant Commitment:** Provide a written affirmation from an officer of the Lender-Applicant and, if applicable, other prospective Holders expressing commitment to provide the required debt financing necessary to construct and fully commission the project and certifying the receipt of internal credit approval for the proposed transaction as if the Guaranteed Obligation were not partially guaranteed that is obtained in accordance with the Lender-Applicant’s own standard internal credit policies and procedures for comparable senior debt transactions.
7. **Equity Commitment Letters:** Provide a copy of the equity commitment letter from each project equity investor and a description of the sources of equity.

Project Description: Section B – Part II

1. **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 qualifies as a renewable energy system, including incremental hydropower, that is located in the United States and that generates electricity or thermal energy by using Commercial Technology (defined in Section 609.2 of Attachment G).

Identify the technology to be employed in the project, as well as how, and the extent to which, it will be employed in the project. Explain how such technology constitutes a Commercial Technology (as defined in Section 609.2 of Attachment G), describing whether the proposed technology has been installed in and is being used in three or more commercial projects anywhere in the same or substantially similar general application as in the proposed project and has been in operation in such commercial project for a period of at least two years.

Such two-year period shall be measured, for each commercial project employing that particular technology, starting on the in-service date of such commercial project. For purposes of this Solicitation, “commercial projects” include such projects for which a loan guarantee has been issued under Title XVII or otherwise.

- b. 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 pre-construction design has been completed, (iv) the extent to which definitive interconnection agreements have been finalized and executed, (v) the security of the project’s fuel supply, if applicable, (vi) the extent to which necessary land rights and state and local permits, as well as environmental clearances necessary to proceed, have been obtained or approved, and (vii) to the extent that any of these items has not been completed, the prospective Borrower’s plan and proposed schedule for completing them. Note that DOE may require additional information to clarify, supplement or explain these descriptions.
2. **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 eligible and ineligible Project Costs as set forth in Section 609.12 of Attachment G.
 3. **Prior Experience:** Summarize the prior experience of each project participant described in Part II.A.2 as it relates to carrying out projects similar to the one being proposed.

4. **Project Sponsors' 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.
5. **Organization:**
 - a. Provide a current organizational chart showing the prospective Borrower's structure, relationship to any subsidiaries or affiliates, and to the project. Advise if there are any proposed changes to the current organizational structure.
 - b. 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.
6. **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.
7. **Legal Opinions/Material Reports:** Provide a copy of all legal opinions, and other material reports, analyses and reviews concerning the project.
8. **Proposed Project Location:** Identify the proposed location and the rationale for the site location.
9. **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.
10. **FIPP Objectives:** Validation that the proposed project meets the objectives of this FIPP Solicitation, including the parameters set forth in Attachment A1, Part I.B.5.

Technical Information: Section C – Part II

1. **Key Contracts and Agreements:** Provide drafts or executed copies 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
 - Any relevant Public Utility Commission (“PUC”) Agreements or Decisions
 - Operations and Maintenance (“O&M”) Contracts

If drafts or executed copies are unavailable, provide a detailed description, schedule and current status of all such contracts and agreements and indicate when copies of the contracts will be available.

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.
5. **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.
6. **Permits and Approvals:** 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. Include relevant documentation. Explain whether governmental entities (other than DOE) are required to approve the activities of the proposed Borrower under this Solicitation, the funding of activities or the carrying out of activities described in the application.
7. **Engineer’s Report:** Include as an appendix an independent engineering report prepared by an engineer for the benefit of the project debt providers 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.

8. **Environmental Report:** Provide the status of NEPA review/approval and a report containing an analysis of the potential environmental impacts of the project to enable DOE to assess whether the project will comply with all applicable environmental requirements.
9. **Insurance Coverage:** Provide a detailed description of the proposed insurance coverage for the project, together with a report from an insurance consultant to the project debt providers that addresses the appropriateness and adequacy of such coverage.

Information Memorandum: Section D – Part II

1. **Information Memorandum:** The Lender-Applicant shall provide an Information Memorandum demonstrating the proposed Borrower’s expertise, financial strength and management capability to undertake and operate the project as proposed. The Information Memorandum shall also present a detailed analysis of:
 - a. 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.
 - b. The operating and market-related risks associated with the project (e.g., equipment performance risk, fuel supply risk or risk of the relevant energy sources, demand for capacity and energy in the relevant power market, price volatility and creditworthiness of offtakers and fuel suppliers) and risk mitigation strategies (e.g., fixed price contracts and reserves).

The Information Memorandum may incorporate the material requested below in this Section D of Part II.

Taken together, the components of the Information Memorandum shall provide analyses demonstrating that, at the time of the application, there is reasonable prospect that the Borrower will be able to repay the principal and interest on the Guaranteed Obligation 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.

NOTE: To the extent that material called for in other sections of the Part II submission is fully dealt with in the Information Memorandum, cross-references to specific sections and pages of the Information Memorandum will be considered responsive.

2. **Financial Model and Analysis:** Include a financial model (Microsoft Excel), with pro-forma financial statements, that takes into account an appropriate range of assumptions. List the major assumptions in a separate worksheet of the model.
 - a. Provide a detailed description of the overall financial plan for the proposed project, including quarterly sources and uses of funding, prepared in accordance with Generally Accepted Accounting Principles in the United States (“U.S. GAAP”), showing the timing and amount of expected equity and debt funding by source.
 - b. The model must include detailed assumptions for the proposed tenor of the Guaranteed Obligation, include income statements, balance sheets, cash flow statements and waterfall statements, show debt service coverage ratios, and allow DOE to utilize the model for a wide range of sensitivity analyses. Incorporate the terms of the term sheet proposed.

- c. Calculate at a minimum the current, leverage and debt service coverage ratios of the Borrower based on the expected tenor of the Guaranteed Obligation.
 - d. Discuss the principal factors that could impair the project's ability to meet its debt service obligations. Include a sensitivity analysis that evaluates the project's performance under appropriate stress scenarios.
 - e. 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.
3. **Market Analysis:** Include an analysis of the market for each product or service to be produced 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 products or services of the project.
 4. **Contractual Arrangements:** Provide copies and detailed summaries of all material contracts related to revenues, expenses and operations (other than operation and maintenance contracts, which are requested in Part II, Section C.1 above), including power purchase agreements, transmission access agreements and fuel supply agreements, if applicable. Analyze the creditworthiness of the buyer(s) under offtake agreement(s).
 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:** 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. **Project Offtake:** Provide the project's forecast for plant capacity. Describe and provide copies (whether entered into or proposed) of any potential off-take or other revenue generating agreements that will provide a primary source of revenues for the project.
 8. **Fuel Supply (if applicable):** Describe the nature of the project's fuel supply and the plans for providing a secure long-term supply of fuel, including provisions for price protection. Describe and provide copies (whether entered into or proposed) of any potential fuel supply agreements.
 9. **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. Specify such types of jobs expected to be created or retained by the Lender-Applicant and the proposed Borrower, in each case, 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. For the purposes of this Solicitation, "Recovery Act funding" includes a DOE loan guarantee issues under Section 1705 of Title XVII.

10. **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. Specify such numbers of jobs expected to be created or retained by the Lender-Applicant and the proposed Borrower, in each case, 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. Lender-Applicants are encouraged to include in their narrative the information used to calculate the FTE figure.

Financing Plan: Section E – Part II

1. **Background and Legal Structure:** Describe the history, ownership, and legal structure (e.g., state governmental agency, local governmental agency, corporation, or partnership) of the proposed Borrower and each Project Sponsor and the relationship between the Borrower and each Project Sponsor. Include a copy of the statutory authority under which the entity was created.
2. **Legal Authority:** Describe the legal authority of the proposed Borrower to carry out the proposed project activities. Provide supporting documentation.
3. **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. Include any funding in anticipation of a cash grant under Section 1603 of the Recovery Act and a detailed funding plan for the Guaranteed Obligation, including any funding intended to be procured through the use of special purpose entities. Summarize each tranche of funding (e.g., amount, maturity, amortization schedule, the proposed loan guarantee percentage, and whether it is a fixed- or floating-rate tranche). Lender-Applicants are reminded that if a claim made under a Loan Guarantee Agreement becomes due, payments of such claim will be paid on different schedules for fixed-rate and floating-rate obligations, as more fully described in Attachment I.
4. **Proposed Term Sheet:** Include a very detailed proposed term sheet for the Guaranteed Obligation that includes the specified terms and conditions required under Attachment I to the Solicitation and the proposed use of any proceeds of a cash grant under Section 1603 of the Recovery Act.
5. **Financial Statements:** Provide audited financial statements of the proposed Borrower and Project Sponsors, 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 quarterly or interim financial statements and associated notes for the current fiscal year of such parties, 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 proposed Borrower, supported by a letter from the appropriate company financial official certifying their correctness.
6. **Credit History:** Include a credit history of the proposed Borrower 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 in the proposed Borrower. 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, including any delinquency on Federal debt, such as tax debt, of such party and of the Lender-Applicant and any proposed Holders. DOE is not authorized to issue a loan guarantee to any party that is delinquent on Federal debt, including tax debt. Lender-Applicants and proposed Holders must therefore provide their tax identification numbers, as required in the application form in Attachment D. DOE may also request additional documentation as part of the project evaluation process.

7. **Litigation and/or Conflicts:** Disclose any current, threatened, or pending litigation involving the proposed Borrower or, to the proposed Borrower's or Lender-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 proposed Borrower's or any Project Sponsor's financial position or ability to complete the project.
8. **Closing Checklist:** Provide a copy of the closing checklist for all sources of financing.
9. **Information on Other Borrowed Funds:** Provide information on any other types of expected debt financing for the project, including credit instrument(s) to be issued, security to be pledged for such borrowing, its priority with respect to the security pledged to the Guaranteed Obligation, and details of structuring.
10. **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 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 U.S. GAAP), associated, or to be associated, with or to serve as collateral.
11. **Credit Rating:** Provide a private credit rating for the project if the project is project financed, or if the project is corporate financed, the corporate credit rating of the Borrower or any third-party guarantor, as applicable, that includes any material effect of the proposed transaction on such corporate credit rating, in each case, from a nationally recognized rating agency that does not give effect to the Federal loan guarantee or any other credit support which would not be available to DOE.
12. **Lender-Applicant Statement:** Provide the name of each proposed initial Holder, including the Lender-Applicant, the amount, terms and conditions of their expected financing, documentation detailing their financial strength, experience with other federal programs, and any other information material to the application. If any Holder intends to sell participations in the loan or otherwise to fund its investment in the Guaranteed Obligation other than on its corporate credit, include a plan of such funding, syndication, securitization, etc., giving such Holder's approach and track record with similar transactions. Explain the extent to which the Lead Lender and each other Holder will retain unguaranteed exposure under the Guaranteed Obligation.

If any Holder contemplates a bond financing, include such Holder'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.

Provide a certification and evidence that each Holder (or, in the case of the Lender-Applicant as Lead Lender, validation of the certification provided in response to Part I.A.2 of Attachment A1) meets all of the requirements of Section 1 of Attachment J.

13. Financing Documents: Provide copies of all key financing documents, including all Loan Agreements, security documents, legal opinions, etc. Such documents will include the required provisions set forth in Attachment I. Submission of financing documents, and acceptance of terms and conditions by DOE, will be a condition precedent for closing of a loan guarantee transaction.

Certifications: Section F – Part II

1. **Lobbying, Debarment and Related Certifications and Assurances:** In submitting an application for a loan guarantee under Title XVII, Lender-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 Lender-Applicants provide additional certifications or supporting documentation as part of the project evaluation process.

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.

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 based on the Part I submission to determine the appropriate level of NEPA review required (i.e., whether an EA or EIS should be prepared or a categorical exclusion to the requirement to prepare an EA or EIS is applicable). Lender-Applicants or proposed Borrowers should be advised that projects requiring an EIS (potential 18-24 month processing time) will be unlikely to complete the NEPA review process before the deadline for commencing project construction (September 30, 2011). Projects requiring an EIS are those that are expected to “significantly” impact the environment. A definition of “significantly” can be found in the Council on Environmental Quality regulations for implementing NEPA at 40 CFR 1508.27. Examples of actions (projects) normally requiring an EIS can be found in the DOE NEPA implementing regulations at 10 CFR 1021, Appendix D to Subpart D.

Selection of a NEPA Contractor

The Lender-Applicant or proposed Borrower will be required to pay the contractor cost for the preparation of any applicable environmental documentation required for NEPA compliance. DOE will be responsible for identifying the necessary contents of the NEPA document and will work with the Lender-Applicant or proposed Borrower and their environmental contractor in an iterative process to develop a document acceptable to DOE. If the Lender-Applicant or proposed Borrower is selecting a contractor (EA contractors may be selected by the Lender-Applicant or proposed Borrower), consideration of the experience and capability to prepare an acceptable DOE document is important. Examples of acceptable DOE NEPA documents can be found on the Loan Guarantee Program Office website at <http://www.lgprogram.energy.gov/keydocs.html>. Several experienced firms selected to prepare NEPA documents for DOE can be found on the DOE NEPA website at <http://www.eh.doe.gov/nepa>, under “DOE-wide NEPA Contracting.” This list of firms is not all inclusive as there are many experienced and capable environmental consulting firms located across the country. DOE will not be involved in the fee and contractual negotiations between the Lender-Applicant or proposed Borrower and the NEPA contractor.

Information to be Submitted to DOE in the Application

Under Section 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 Lender-Applicant or proposed Borrower should submit the following information to assist DOE in determining the appropriate level of NEPA review (EA, EIS or categorical exclusion), and in preparing the applicable NEPA documentation.

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 sites or 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., source materials to be used, project 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 agencies, companies or individuals.

DOE recommends that Lender-Applicants and proposed Borrowers 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." Lender-Applicants and proposed Borrowers may also want to refer to existing EA'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 COMMERCIAL TECHNOLOGY RENEWABLE ENERGY GENERATION
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	\$50,000, payable by the Lender-Applicant as follows: 1. with Part I (First Fee) submission: \$12,500 (25%), and 2. with Part II submission: \$37,500 (75%)
II. Facility (Second Fee)	1/2 of 1.0% of guaranteed portion of Guaranteed Obligation, payable by the Lender-Applicant as follows: 1. upon the signing of a Term Sheet: 20%, and 2. At Closing: 80%.
III. Maintenance (Third Fee)	Expected to be in the range of \$10,000 to \$25,000 per year and payable by the Borrower, 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 Commercial Technology Renewable Energy Generation Projects
[Application][Facility][Maintenance] Fee for ([Lender-Applicant][Borrower] name)**

Once the initial portion (25%) of the application fee received with respect to Part I submission, DOE will contact the Lender-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
 Commercial Technology Renewable Energy Generation Projects**

This form is for use by Lender-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 Lender-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 FedConnect 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:
 U.S. DOE Loan Guarantee Program
 c/o USA Energy Advisors
 Attn: DOE Commercial Renewable Energy Generation Solicitation
 919 Old Henderson Road
 Columbus, OH 43220-3722

If you need assistance or have any questions please call at (614) 324-5940 or email at DOEloanquestions@USAEA-Connect.com.

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		
City	State	9 Digit Zip Code

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

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

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

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

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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 EPC Act 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 Lender-Applicant, the proposed Borrower and/or the Project Sponsor, 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 Lender-Applicant specifically identifies and marks its own such data, and such data of the proposed Borrower and/or any Project Sponsor, with their assistance in so identifying and marking, in accordance with the following provisions:

1. Lender-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 Lender-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 Lender-Applicant, the proposed Borrower and/or any Project Sponsor.”

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 Lender-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 Lender-Applicant, the proposed Borrower and/or any Project Sponsor.”

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 Lender-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 Lender-Applicant's knowledge and belief after due diligence, and that the Lender-Applicant has not omitted any material facts.

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

Lender-Applicant (Organization Name)

--

Name of Lender-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
Loan Guarantee Program Office
U.S. Department of Energy
1000 Independence Avenue, SW
Washington, DC 20585-0121

Dear _____:

This is to confirm that it is our intent to seek a loan guarantee pursuant to your solicitation serial no. DE-FOA-0000166, dated October 7, 2009. This confirms we have met all mandatory requirements as specified in the Solicitation. Our Part I Application fee was wired as per your instructions on xx/xx/xx.

We plan to submit our complete Part II submission on xx/xx/xx, the due date for the [INSERT NO. OF PART II ROUND] 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.

If we decide to withdraw from consideration for a loan guarantee at any time, we will notify DOE in writing of that decision.

Attachment F

Communication Instructions

Responses to this Solicitation

1. FEDCONNECT

Potential Lender-Applicants and proposed Borrowers 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: Lender-Applicants and proposed Borrowers 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, <http://www.lgprogram.energy.gov/>.

Lender-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, at any time prior to the filing of a Part II submission. Such form must be submitted both as hard copies (2) in accordance with Section 2 below and electronically through FedConnect.

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

Lender-Applicants may ask questions or seek clarification prior to filing a Part II submission through FedConnect or by contacting the Loan Guarantee Program Office ("LGPO") at DOEloanquestions@USAEA-Connect.com in accordance with the procedures set forth in Section IV.3 of this Solicitation. Lender-Applicants must include in the subject line "RE CMCL TECH RENEW Solicitation Question" and a few words identifying the topic of the question. DOE will respond to such questions, as appropriate, and may make Lender-Applicant's question(s) and DOE's response(s)

to such question(s) public, for example, by posting them on LGPO's website or on the FedConnect website.

If a Lender-Applicant needs to make substantive changes or additions to its application prior to the application submission deadline, the Lender-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

During the Part II submission period, the last round of which expires 11:59 pm (ET) on January 6, 2011, the preferred method of communication with DOE is through FedConnect. However, alternate communication channels include the following, and CD-ROMS containing the Lender-Applicant's Part I and Part II submissions must be sent by express mail to the mailing address listed below and arrive no later than two (2) business days after the date on which the Lender-Applicant filed its submission by FedConnect:

- Regular or express mail, including private carriers at

U.S. Department of Energy Loan Guarantee Program
c/o USA Energy Advisors
Attn: DOE Commercial Renewable Energy Generation Solicitation
919 Old Henderson Road
Columbus, OH 43220-3722

- E-mail at:

DOEHelpDesk@USAEA-Connect.com

Subject line must include "RE CMCL TECH RENEW Solicitation Question" and a few words identifying the topic of the question

- Telephone at: (614) 324-5940

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

3. SINGLE POINT OF CONTACT

After receipt of a completed Part II submission and a decision by DOE to begin negotiations with a Lender-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
Commercial Technology Renewable
Energy Generation 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 Agreement and Loan Guarantee Agreement; and
- (3) The servicing and monitoring of a Loan Agreement and Loan Guarantee Agreement, including during the construction, startup, commissioning, shakedown, and operational phases of an Eligible Project.

Applicant [Intentionally Omitted. See “Lender-Applicant”].

Application has the meaning set forth in Section IV.2 of the Solicitation.

Borrower 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 is a borrower under the Loan Agreement and is responsible for repaying the Guaranteed Obligation.

Commercial Technology means a technology in general use in any commercial marketplace, within or outside the United States, 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 in three or more commercial projects anywhere 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 Lender-Applicant and the proposed Borrower, with the understanding of the parties that if all specified and precedent funding obligations and all other contractual, statutory and regulatory requirements, or other requirements are satisfied, DOE, as guarantor, the Lender-Applicant and the proposed Borrower will execute a Loan Agreement and DOE and the Lead Lender and/or other Holder(s) 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, Lead 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.

(3) [Intentionally omitted]

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.

FCRA means the Federal Credit Reform Act of 1990, P.L. 101-508, 104 Stat. 1388-609 (1990), as amended by P.L. 105-33, 111 Stat. 692 (1997).

[Intentionally omitted]

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 (i) owns a direct interest as a lender in a Guaranteed Obligation and in the DOE loan guarantee at the time the Loan Guarantee Agreement is

executed, (ii) has acquired such a direct interest at any time after the Loan Guarantee Agreement is executed through a valid sale or assignment by a prior Holder in accordance with the requirements set forth in the Loan Guarantee Agreement, or (iii) has succeeded in due course through such a direct interest by operation of law. At the time a Holder acquires or succeeds to a direct interest in the Guaranteed Obligation, such Holder must satisfy the requirements of a Lead Lender or Holder, as applicable, as set forth in Attachment J to the Solicitation.

Intercreditor Agreement means any agreement between or among DOE in connection with a loan guarantee and one or more other persons providing financing for the benefit of an Eligible Project, entered into in connection with a DOE loan guarantee upon a determination by DOE that such agreement is reasonable and necessary to protect the interests of the United States and addressing customary matters, such as priorities and voting rights among lenders, as such agreement may be amended or modified from time to time with the consent of DOE.

Lead Lender has the meaning set forth in Section I.C of the Solicitation.

Lender-Applicant has the meaning set forth in Section I.C of the Solicitation.

Loan Agreement means a written agreement among DOE, as guarantor, a Borrower, the Lead Lender and any other Holder(s) containing the terms and conditions under which the Lead Lender and any such other Holder(s) will make loans to the Borrower to resume or start and complete an Eligible Project.

Loan Guarantee Agreement means a written agreement that, when entered into, subject to the availability of funds, by DOE, the Lead Lender and any other Holder(s), 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 the Lead Lender and any other Holder(s) subject to the terms and conditions specified in the Loan Guarantee Agreement and the Loan 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 proposed Borrower, 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 in the proposed Borrower.

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

Solicitation means the solicitation issued by DOE on October 7, 2009 for Applications for renewable energy systems projects located in the United States, including hydropower, that generate electricity or thermal energy by using Commercial Technology.

Term Sheet means an offering document issued by DOE that specifies the detailed terms and conditions of the Loan Agreement under which DOE may enter into a Conditional Commitment with the Lender-Applicant and the proposed Borrower. 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) A Lender-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 Lender-Applicant;

(2) Payment of the Application filing fee (First Fee) for the Application;

(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 of the [] technology(ies) to be employed in the project as Commercial Technologies; and

(iv) How the proposed Borrower 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) The proposed Borrower's business plan on which the project is based and such Borrower'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 proposed Borrower 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 the proposed Borrower and parties providing such Borrower'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 proposed Borrower;

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

(19) An independent 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 proposed Borrower 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 proposed Borrower;

(21) A private credit rating for the project if the project is project financed, or if the project is corporate financed, the corporate credit rating of the Borrower or any third-party guarantor, as applicable, that includes any material effect of the proposed transaction on such corporate credit rating, in each case, from a nationally recognized rating agency (evaluated without the benefit of the guarantee under the Loan Guarantee Agreement or any other credit support which would not be available to DOE), and such credit rating must be, in each case, at least a credit rating equivalent of "BB" from Standard & Poor's or Fitch's or "Ba2" from Moody's;

(22) A list showing the status of and estimated completion date of the proposed Borrower'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. Solely with respect to real property assets listed and intended to be included in Project Costs, 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 the proposed 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 Lender-Applicant 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 Lender-Applicant that it believes that there is "reasonable prospect" that the Guaranteed Obligations will be fully paid from project revenue;

(29) Evidence of the Lender-Applicant's qualifications as a Lead Lender and any proposed Holder's qualifications, in each case, in accordance with applicable sections of Attachment J to the Solicitation; and

(30) 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 Lender-Applicant has paid the First Fee and the Application is signed by the appropriate entity or entities with the authority to bind the Lender-Applicant to its 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 (as defined in § 609.11 of this Attachment) that is a Lead Lender or is not a Holder meeting the qualifications of Section 1 of Attachment J;

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

(5) [Intentionally omitted]; or

(6) The Project Sponsor or proposed Borrower 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 is a Commercial Technology and, yields a commercially 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 the 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 proposed Borrower and other principals involved in the project;

(8) Whether there is sufficient evidence that the Project Sponsor or proposed Borrower will diligently pursue the project, including resuming or initiating and completing the project in a timely manner;

(9) Whether and to what extent the proposed Borrower 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, including the nature of any anticipated intercreditor arrangements;

(12) The proposed Borrower'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 proposed Borrower 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 Lender-Applicant in writing and provide it 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 Lender-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, including a credit rating, and information obtained as the result of meeting with the

Lender-Applicant and/or the proposed Borrower, may offer to a Lender-Applicant and the proposed Borrower detailed terms and conditions that must be met, including terms and conditions that must be met by the Lender-Applicant and the proposed Borrower.

(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 Lender-Applicant and the proposed Borrower, where appropriate. The Term Sheet will request that the Lender-Applicant and the proposed Borrower 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 Lender-Applicant or the proposed Borrower. 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 Lender-Applicant 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 Lender-Applicant and the proposed Borrower 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, the Lender-Applicant and any other Holders 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 the Act 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 Lender-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 a Lender-Applicant and the proposed Borrower, DOE, after consultation with the Lender-Applicant, will set a closing date for execution of the Loan Guarantee Agreement.

(b) By the closing date, the Lender-Applicant and the proposed Borrower 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 Lender-Applicant and the proposed Borrower have 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 Lender-Applicant the First and Second Fees and from the proposed Borrower, 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 Lender-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) The Lender-Applicant must provide a letter from a nationally recognized rating agency reflecting the revised Conditional Commitment for the project (including any changes as described in subsection (e) above and evaluated without the benefit of the DOE loan guarantee under the Loan

Guarantee Agreement or any other credit support which would not be available to DOE) that confirms a credit rating for the Guaranteed Obligation of at least a “BB” from Standard & Poor’s or Fitch or “Ba2” from Moody’s. Such a credit rating must be updated or reconfirmed if the project is project financed or if corporate financed, must include any material effect of the transaction, including the new debt from the project, on such corporate credit rating and must be, in each case, 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 Documentation.

(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 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 thereunder.

(d) Prior to the execution by DOE of a Loan Guarantee Agreement and the Loan Agreement, DOE must ensure that the following requirements and conditions, which must be specified in the Loan 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) Intentionally Omitted.
 - (ii) Intentionally Omitted.
 - (iii) DOE shall guarantee no more than 80 percent of the Guaranteed Obligation, and the guaranteed portion of the Guaranteed Obligation may be separated from or “stripped” from the non-guaranteed portion of the Guaranteed Obligation in accordance with the provisions of the Loan Guarantee Agreement, 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, Loan 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;

(14) There is satisfactory evidence that Borrower and the Lead Lender and any 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 Lead 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 Lead-Lender, and the 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 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) The Borrower, Lead Lender and any other Holder each 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 and Loan Agreement contain such other terms and conditions as DOE deems reasonable and necessary to protect the interest of the United States, including without limitation provisions for (i) such collateral and other credit support for the Guaranteed Obligation, (ii) such lien sharing and (subject always to Section 1702(d)(3) of Title XVII) priorities among lenders and (iii) such intercreditor arrangements as, in each case, DOE deems reasonable and necessary to protect the interests of the United States;

(23) (i) The Lead Lender is an Eligible Lender, as defined in § 609.2 of this Attachment, and meets DOE's lender eligibility and performance requirements contained in §609.11(a) of this Attachment and in Attachment J to the Solicitation; and

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

(24) The Loan Agreement shall include the provisions required by Attachment I to the Solicitation.

(e) The Loan 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 to the extent of the DOE loan guarantee, as provided in the Loan Guarantee Agreement, and 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, as and to the extent provided in the Loan Guarantee Agreement, the Loan Agreement and any other applicable agreements.

(3) The Lead 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 Agreement must contain audit provisions which provide, in substance, as follows:

(1) The Lead Lender 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, Lead Lender, or other party servicing the Guaranteed Obligations, as applicable. Examination of records may be made during the regular business hours of the Borrower, Lead Lender, or other party servicing the Guaranteed Obligations, or at any other time mutually convenient as required in § 609.17 of this Attachment.

(g)(1) A Lead Lender or other Holder may sell, assign or transfer an interest in a Guaranteed Obligation and the DOE loan guarantee in accordance with Attachment I to the Solicitation to another party that meets the requirements of a Holder in Attachment J to the Solicitation. Such Lead Lender or other Holder 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 this Attachment if the transferring Lead Lender or other Holder was performing these functions. 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 Agreement or related documents a procedure for tracking and identifying Holders of Guaranteed Obligations. These duties usually will be performed by the Lead Lender or other 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 this Attachment and be 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.

(b) Intentionally Omitted.

(c) The servicing duties shall be performed by the Lead Lender or other servicer if approved by the Secretary. Such servicing duties shall include:

(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 Guaranteed 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, including in Attachment I to the Solicitation, 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 and agents designated by 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.

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

§ 609.12 Project Costs.

(a) Before entering into a Loan Guarantee Agreement and Loan Agreement, DOE shall determine the estimated Project Costs for the project that is the subject of such agreements. To assist the Department in making that determination, the Lender-Applicant must provide to DOE the proposed Borrower's estimate, calculation and recording of 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 Lender-Applicant must provide to DOE the proposed Borrower's calculation of 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 the Lead Lender 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, if any, 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 Guaranteed 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 such 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 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, to the extent provided for in the Loan Guarantee Agreement. 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 Lead Lender or other 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 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, subject to and in addition to the terms of any applicable Intercreditor Agreement, 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 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 Agreement to cure such default. If the default is not cured during the period of grace, the Secretary may, subject to and in addition to the terms of any applicable Intercreditor Agreement, 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 any 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 up to 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 Agreement until the guaranteed portion of 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 as and to the extent provided in the Loan Guarantee Agreement, the Secretary shall be subrogated to the rights of the Holders as provided in the Loan Guarantee Agreement, Loan Agreement and/or any other applicable agreements. The Holders shall transfer and assign to the Secretary all rights held by the Holders of the Guaranteed Obligation as provided in the Loan Guarantee Agreement, Loan Agreement and/or any other applicable agreements. Such assignment shall include all related liens, security, and collateral rights to the extent held by such Holders.

(h) Where the Loan Agreement or any applicable Intercreditor Agreement so provides, the Lead Lender or other agent or servicer, as appropriate, and the Secretary may jointly agree to a work-out strategy, and/or a plan of liquidation of the assets pledged to secure the Guaranteed Obligation and other applicable debt.

(i) Where payment of the Guaranteed Obligation has been made and the Lead Lender or other servicer has not undertaken a plan of liquidation (or at any such earlier time as may be permitted by applicable agreements), the Secretary, acting through the U.S. Attorney General, in accordance with the rights received through subrogation or other applicable agreements, subject to any applicable Intercreditor Agreement, 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 (or an agent acting for the benefit of the Secretary) is awarded title to collateral assets pursuant to a foreclosure proceeding, the Secretary may take action to complete, maintain, operate, or lease such assets, or otherwise dispose of any such assets or take any other

necessary action which the Secretary deems appropriate (and consistent with any applicable Intercreditor Agreement), 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, the Loan Agreement and/or any applicable Intercreditor 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, DOE and any agent acting for the benefit of 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 from the recovery so received by the U.S. Attorney General after full payment of the foregoing shall be available for the benefit of other parties lawfully entitled to claim them.

(l) With regard to partial guarantees by DOE of the Guaranteed Obligation or if any other creditors are secured by a lien on collateral pledged to secure the Guaranteed Obligation, the proceeds received by the collateral agent or other responsible party as a result of any liquidation or sale of, collection from or other realization on any such collateral may, if so agreed in advance, be applied as follows (with any money distributed to the Federal Government to be further distributed according to §609.15(k)):

(1) First, to the payment of reasonable and customary fees and expenses incurred in the liquidation or sale, collection or other realization (including without limitation any fees and expenses that the Attorney General of the United States is lawfully entitled to claim in connection with such action);

(2) Second, distributed among the Holders of the Guaranteed Obligation (including DOE, as subrogee) and the other creditors entitled to share in such proceeds on no greater than a pro rata share basis; and

(3) As otherwise provided in the applicable agreement or agreements.

(m) No action taken by the Lead Lender or other Holder or other servicer in respect 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, the Loan Agreement, and/or other applicable 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 or sale of, collection from or other realization on the 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 any Holder's or other person's interest in the project upon liquidation or sale of, collection from or other realization on the collateral.

§ 609.16 Perfection of Liens and Preservation of Collateral.

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

(1) The Lead Lender or other Holder or other agent or servicer will take those actions necessary to perfect and maintain liens, as applicable, on assets which are pledged as collateral for the Guaranteed Obligation; and

(2) Upon default by the Borrower, the holder of pledged collateral shall take such actions as the Secretary (subject to any applicable Intercreditor Agreement) 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 (unless otherwise provided in applicable agreements). 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 Agreement and related documents shall provide that:

(1) The Lead Lender or other party servicing the Guaranteed Obligations, as applicable, and the Borrower, shall keep such records concerning the project as is necessary, including the Application, Term Sheet, Conditional Commitment, Loan Guarantee Agreement, Loan 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, Lead 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, Lead Lender 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 Provisions for Loan Agreements

Davis Bacon Provisions for Loan Agreements

(a) **Definitions.** For purposes of this Attachment H and Section 2.2 set out in Section 1 of Attachment I, and as required by subparagraph (b)(8) below of this Attachment, the definitions set forth in Section 5.2 of title 29 of the Code of Federal Regulations (CFR) are incorporated by reference herein, some of which are set forth below, except to the extent modified below, in addition to certain newly defined terms set forth below for purposes of Davis-Bacon Act compliance under Section 1705 of Title XVII:

- (1) “Davis-Bacon Act Covered Contract” means any contract, agreement or other arrangement for the “construction, prosecution, completion or repair” (as such term is defined below) of the Project (including the Loan Agreement) in connection with section 1705(c), as enacted by the American Recovery and Reinvestment Act of 2009.
- (2) “Contract Party” means any contractor, subcontractor (including any lower tier subcontractor) or other entity (other than the Borrower but including, if applicable, the project sponsor or affiliate) that is party to a Davis Bacon Covered Contract; it being understood that the foregoing exclusion of Borrower from the definition of Contract Party in no way affects the Borrower’s Davis Bacon Act obligations as set forth in this Attachment.
- (3) “Construction, prosecution, completion, or repair” or “performance of the Project” means the following:
 - (1) All types of work done on a particular building or work at the site thereof, including work at a facility which is deemed a part of the site of the work within the meaning of (paragraph (1) of 29 CFR 5.2) by laborers and mechanics employed by a construction contractor or construction subcontractor, including without limitation—
 - (i) Altering, remodeling, installation (where appropriate) on the site of the work of items fabricated off-site;
 - (ii) Painting and decorating;
 - (iii) Manufacturing or furnishing of materials, articles, supplies or equipment on the site of the building or work (or, under the United States Housing Act of 1937; the Housing Act of 1949; and the Native American Housing Assistance and Self-Determination Act of 1996 in the construction or development of the project);
 - (iv)(A) Transportation between the site of the work within the meaning of paragraph (1)(1) of 29 CFR 5.2 and a facility which is dedicated to the construction of the building or work and deemed a part of the site of the work within the meaning of paragraph (1)(2) of 29 CFR 5.2; and
 - (B) Transportation of portion(s) of the building or work between a site where a significant portion of such building or work is constructed, which is a part of the site

of the work within the meaning of paragraph (l)(1) of 29 CFR 5.2, and the physical place or places where the building or work will remain.

(2) Except as provided in paragraph (j)(1)(iv)(A) of 29 CFR 5.2, the transportation of materials or supplies to or from the site of the work by employees of the construction contractor or a construction subcontractor is not "construction, prosecution, completion, or repair".

(4) "Contracting officer" means the individual, a duly appointed successor, or authorized representative who is designated and authorized to enter into contracts on behalf of the Federal agency or any representative designated by DOE to the Borrower from time to time for purposes of Davis-Bacon Act compliance.

(5) "Laborer or mechanic" includes at least those workers whose duties are manual or physical in nature (including those workers who use tools or who are performing the work of a trade), as distinguished from mental or managerial. The term laborer or mechanic includes apprentices, trainees, and helpers. The term does not apply to workers whose duties are primarily administrative, executive, or clerical, rather than manual. Persons employed in a bona fide executive, administrative, or professional capacity as defined in part 541 of title 29 of the Code of Federal Regulations are not deemed to be laborers or mechanics. Working foremen who devote more than 20 percent of their time during a workweek to mechanic or laborer duties, and who do not meet the criteria of part 541, are laborers and mechanics for the time so spent.

(6) "Site of the work" is defined as follows:

(i) The site of the work is the physical place or places where the building or work called for in the Davis-Bacon Act Covered Contract will remain; and any other site where a significant portion of the building or work is constructed, provided that such site is established specifically for the performance of such contract or project;

(ii) Except as provided in subparagraph (a)(6)(iii) of this Attachment , job headquarters, tool yards, batch plants, borrow pits, etc., are part of the site of the work, provided they are dedicated exclusively, or nearly so, to performance of the Davis Bacon Act Covered Contract or project, and provided they are adjacent or virtually adjacent to the site of the work as defined in subparagraph (a)(6)(i) of this Attachment ;

(iii) Not included in the site of the work are permanent home offices, branch plant establishments, fabrication plants, tool yards, etc., of the Borrower or a Contract Party whose location and continuance in operation are determined wholly without regard to a particular Federal or federally assisted contract, such as the Loan Agreement, or project. In addition, fabrication plants, batch plants, borrow pits, job headquarters, tool yards, etc., of a commercial or material supplier, which are established by a supplier of materials for the project before opening of bids and not on the site of the work as stated in subparagraph (a)(6)(i) of this Attachment , are not included in the site of the work. Such permanent, previously established facilities are not part of the site of the work, even where the operations for a period

of time may be dedicated exclusively, or nearly so, to the performance of a Davis-Bacon Act Covered Contract.

- (7) “Wage determination” includes the original decision and any subsequent decisions modifying, superseding, correcting, or otherwise changing the provisions of the original decision. The application of the wage determination shall be in accordance with the provisions of Sec. 1.6 of title 29 of the Code of Federal Regulations.

(b)(1) Minimum wages.

(i) All laborers and mechanics employed or working on the site of the work, 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 as Schedule X and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Borrower and such laborers and mechanics, or between any Contract Party 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 subparagraph (b)(1)(iv) of this Attachment ; 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 paragraph (b)(4) below. 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 subparagraph (b)(1)(ii) of this Attachment) as attached hereto as Schedule __ and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Borrower and each Contract Party 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 Davis-Bacon Act Covered 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 Borrower or any Contract Party, as the case may be, and the respective 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 Borrower or any Contract Party, as the case may be, 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 subparagraphs (b)(1)(ii) (B) or (C) of this Attachment, shall be paid to all workers performing work in the classification under any Davis-Bacon Act Covered Contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in any Davis-Bacon Act Covered Contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Borrower or any Contract Party 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 Borrower or any Contract Party does not make payments to a trustee or other third person, the Borrower or any Contract Party 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 Borrower or any Contract Party, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Borrower or any Contract Party to set aside in a separate account assets for the meeting of obligations under the plan or program.

(2) Withholding. The DOE contracting officer 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 Borrower or a Contract Party, as the case may be, under this Contract or any other Federal contract with the same Borrower or Contract Party, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same Borrower or Contract Party, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed or working on the site of the work 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, all or part of the wages required by the Davis-Bacon Act Covered Contract, DOE may, after written notice to the Borrower take such action as may be necessary to cause the suspension of any further disbursement under the DOE-Guaranteed Loan until such violations have ceased, it being understood

that any such suspension shall not affect the validity of the DOE Guarantee on the portions of the DOE-Guaranteed Loan that have been disbursed prior to the date of such suspension and remain outstanding as of such date.

(3) Payrolls and basic records.

(i) Payrolls and basic records relating thereto shall be maintained by the Borrower and each Contract Party during the course of the work and preserved for a period of three years thereafter for all of their respective laborers and mechanics employed or working at the site of the work. 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 Borrower and each Contract Party 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. The Borrower and any Contract Party 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 Contract Party shall submit weekly for each week in which any Davis-Bacon Act Covered Contract work is performed a copy of all payrolls to the Borrower. The highest tier Contract Party is responsible for the submission of copies of payrolls by all subcontractors and lower tier subcontractors. Unless otherwise directed by DOE, the Borrower shall submit weekly for each week in which any Contract work is performed a copy of all of its payrolls, as well as all payrolls of each Contract Party, to the DOE contracting officer. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under subparagraph (b)(3)(i) of this Attachment, 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 Borrower is responsible for the submission of copies of its own payrolls and the payrolls of each Contract Party, in each case, to the extent each employs laborers and mechanics in the performance of the Project. Each Contract Party is responsible for the submission of copies of payrolls by all subcontract or lower-tier Contract Parties. The Borrower and each Contract Party shall maintain the full social security number and current address of each of its own covered workers, and shall provide them upon request, in the case of the Contract Party, to the Borrower, for transmission to the DOE 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 subparagraph (b)(3)(ii)(A) of this Attachment for a higher-tiered Contract Party to require a lower-tiered Contract Party to provide addresses and social security numbers to such Contract Party for its own records, without weekly submission to the DOE or the Borrower.

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Borrower or Contract Party or his or her agent who pays or supervises the payment of the laborer or mechanic employed under the Davis-Bacon Act Covered Contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under subparagraph (b)(3)(ii) of this Attachment , the appropriate information is being maintained under subparagraph (b)(3)(i) of this Attachment , and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed under the Davis-Bacon Act Covered 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 Loan Agreement and any other Davis-Bacon Act Covered 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 subparagraph (b)(3)(ii)(B) of this Attachment .

(D) The falsification of any of the above certifications may subject the Borrower or any Contract Party to civil or criminal prosecution under section 1001 of title 18 and section 3729 of title 31 of the United States Code.

(iii) The Borrower and each Contract Party shall make the records required under subparagraph (b)(3)(i) of this Attachment available for inspection, copying, or transcription by authorized representatives of the DOE or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the Borrower or any Contract Party fails to submit the required records or to make them available, the DOE may, after written notice to the Borrower take such action as may be necessary to cause the suspension of any further disbursement under the DOE-Guaranteed Loan, it being understood that any such suspension shall not affect the validity of the DOE Guarantee on the portions of the DOE-Guaranteed Loan that have been disbursed prior to the date of such suspension and remain outstanding as of such date. 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 Borrower or Contract Party 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 Borrower or Contract Party 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 Borrower or Contract Party'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 Borrower or the Contract Party 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 Borrower or the Contract Party 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 Borrower and any Contract Party shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this Loan Agreement and any other Davis-Bacon Act Covered Contract.

(6) Subcontracts. The Borrower and any higher or lower tier Contract Party shall insert in any Davis-Bacon Act Covered Contract the clauses contained in subparagraphs (b)(1) through (10) of this Attachment and such other clauses as the DOE may by appropriate instructions require, and also a clause requiring the higher tier Contract Party to include these clauses in any lower tier Davis-Bacon Act Covered Contract. The Borrower shall be responsible for the compliance by any Contract Party with all the contract clauses in (1) through (10) of this Attachment .

(7) Contract termination: debarment. A breach of any of the contract clauses in (1) through (10) of subparagraph (b) in this Attachment will constitute an Event of Default by the Borrower under Article [X] of the Loan Agreement and may be grounds for termination of any Davis-Bacon Act Covered Contract, and for debarment as a contractor, a subcontractor or other entity as provided in 29 CFR 5.12; provided, however, that the termination provision in this subparagraph (b)(7) shall not apply to the Loan Agreement but that, in lieu of the application of such termination provision of subparagraph (b)(7), the remedies available to DOE under Section [x] of the Loan Agreement shall apply upon such an Event of Default.

(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 (other than Section 5.5(b) of 29 CFR part 5) are herein incorporated by reference in this Loan Agreement and any other Davis-Bacon Act Covered Contract.

(9) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this Loan Agreement or any other Davis-Bacon Act Covered Contract shall not be subject to the general disputes clause of such 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 Borrower or any Contract Party and DOE, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of eligibility.

(i) By entering into this Loan Agreement and any other Davis-Bacon Covered Contract, the Borrower and the Contract Party each certifies that neither it (nor he or she) nor any person or firm who has an interest in the Borrower or the Contract Party'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 Loan Agreement or any other Davis-Bacon Covered Contract shall be assigned or subcontracted, as the case may be, 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.

Attachment I

Guaranteed Obligation and Loan Guarantee Agreement Specified Terms and Conditions

UNITED STATES DEPARTMENT OF ENERGY
SPECIFIED TERMS AND CONDITIONS FOR
GUARANTEED OBLIGATIONS AND LOAN GUARANTEE AGREEMENTS
Financial Institution Partnership Program Under Section 1705 of Title XVII

Overview

This Attachment I sets out certain parameters for loans eligible to receive loan guarantees from the DOE under this FIPP Solicitation. This includes certain terms and conditions required to be incorporated into a Lender-Applicant's proposed loan structure and documentation. Attachment I also summarizes the essential terms and conditions of the Loan Guarantee Agreement under this FIPP Solicitation. This Attachment I supplements Attachment G and also provides for specific implementation of certain of Attachment G's requirements, including Section 609.10(d), (e) and (f) therein. Lender-Applicants, however, must separately consider and assure their compliance with the broader requirements of Attachment G. Moreover, DOE reserves the right to amend the terms of this Attachment I and the form Loan Guarantee Agreement referred to below to any extent DOE considers desirable or appropriate to serve the programmatic objectives of the FIPP, Title XVII and the Recovery Act based on the experience DOE gains in connection with this FIPP Solicitation. DOE will post any such material amendment on the Program Website at <http://www.lgprogram.energy.gov> and/or on FedConnect.

Section 1 of this Attachment I identifies certain key terms and conditions for Loan Agreements and Intercreditor Agreements eligible for DOE loan guarantees under the Solicitation, including certain provisions required pursuant to Section 1705 of Title XVII and the Recovery Act. In some cases, these key terms and conditions are set out as specific provisions required to be incorporated into a Lender-Applicant's proposed loan documentation in the form set out in this Attachment I, with only such changes as may be necessary to conform to the definitions used by the Lender-Applicant in its Loan Agreement. Where key terms and conditions are described but not specifically set out in Section 1, Lender-Applicants must craft provisions which comply with the descriptions.

Section 2 describes key provisions of the Loan Guarantee Agreement to be entered into among DOE, each Holder and the Administrative Agent. The Loan Guarantee Agreement sets out the terms and conditions of DOE's loan guarantee, requires certain Holder eligibility certifications, and establishes certain limitations on the transferability of the Guaranteed Obligation. The DOE's form of Loan Guarantee Agreement will be posted on the Program Website. The form of the Loan Guarantee Agreement may not be altered by a Lender-Applicant. The terms and conditions of a Lender-Applicant's other loan documentation are to be conformed to those of the Loan Guarantee Agreement.

DOE will evaluate each Lender-Applicant's term sheet and any other financing documents, in each case, setting forth its proposed loan structure, terms and conditions, as required to be provided by Lender-Applicant in connection with its Part II submission, for compliance with the requirements of this Attachment I, as well as with those set out in Attachment G, including Section 609.10(d), (e) and (f). Lender-Applicants may incorporate intercreditor provisions, which would otherwise constitute an Intercreditor Agreement, in the proposed Loan Agreement and related collateral documentation. A

separate Intercreditor Agreement is not required where not appropriate for the proposed financing structure.

Section 1 - Loan Structuring and Required Terms and Conditions

Lender Participation: Consistent with the objectives and parameters for use of the DOE loan guarantee under this FIPP Solicitation, including the parameters set forth in Attachment A1, Section I.B.5, it is expected that the Lead Lender's funding commitment under the proposed Loan Agreement will represent a substantial portion of the Guaranteed Obligation. The Lender-Applicant's overall funding plan for the Guaranteed Obligation proposed in its Part II submission, which will provide the extent of the Lead Lender's funding commitment, will be evaluated by DOE. The Lead Lender, and all other Holders, will be restricted from transferring their interests in the Guaranteed Obligation in accordance with the provisions of the Loan Guarantee Agreement, as described in Section 2 of this Attachment I.

Guaranteed Obligations: Pursuant to the terms of the Loan Guarantee Agreement described in Section 2 below, DOE will guarantee up to eighty percent (80%) of the maximum aggregate principal amount of and interest on a Guaranteed Obligation.

Collateral: The Guaranteed Obligation shall be secured on a first priority basis and shall rank senior in priority of payment to any other project-related debt of the Borrower, which shall be subject to usual and customary subordination agreements. The Borrower's obligations under the Loan Agreement shall be secured by all assets comprising or otherwise necessary for the construction and operation of the Eligible Project, subject to third-party liens which are usually and customarily permitted. The security interests shall be held for the benefit of the Holders and DOE by one or more qualified collateral agents selected by the Lead Lender.

Priorities: The claims of the Holders and DOE shall be *pari passu* with one another, and distributions shall be made on a *pro rata* basis, including with respect to principal and interest to the extent DOE becomes subrogated to the Holders' rights therein by reason of payment under the Loan Guarantee Agreement; provided, however, that any claim of the Holders to breakage costs, make-whole amounts, pre-payment premiums and other similar indemnified amounts shall be subordinated in priority of payment to the payment of principal and interest. The DOE's annual maintenance fee (or Third Fee) is to be treated equally with the fees of the Administrative Agent and collateral agent in their distribution priority, and any other fees and expenses incurred by DOE (or on its behalf) in connection with the Guaranteed Obligation (including the fees and expenses of the Master Servicer) are to be treated equally with those incurred by the Holders.

Loan Structures: It is DOE's intent and expectation that Lender-Applicants will have flexibility to structure Guaranteed Obligations so as to optimize access to private debt capital and achieve the lowest possible cost of funds for an Eligible Project. However, a Guaranteed Obligation and the DOE's loan guarantee must be structured as a single, unified interest such that the Guaranteed Obligation benefits from the DOE's loan guarantee on an undivided basis. Nonetheless, a Guaranteed Obligation may be divided into two or more loans or tranches, provided that no more than 80% of any tranche or loan is covered by DOE's loan guarantee. For example, a Guaranteed Obligation may be divided into loans or tranches which accrue interest at a fixed rate or a floating rate, which have different tenors or amortization schedules, or which carry different prepayment rights. No more than 80% of any such loan or tranche, however, may be covered by the DOE loan guarantee. Pursuant to Section 609.10(d)(10) of Attachment G, interest rates must be determined to be reasonable by DOE in

consultation with Treasury. In addition, the structure of the Guaranteed Obligation shall include usual and customary reserves which shall be available for, among other purposes, payment of fees and expenses of DOE and the Holders that are associated with any pending or occurring event of default.

Voting Rights: Consistent with its position generally as the majority creditor with respect to each Guaranteed Obligation, DOE shall be a party to the Loan Agreement, as guarantor, and shall have the exclusive right to exercise all voting and control rights usually and customarily provided to lenders in similar project finance transactions – including, without limitation, the right to grant amendments and waivers and, in the case of an event of default, to accelerate the Guaranteed Obligation and exercise remedies, including foreclosure on collateral – with the following exceptions and qualifications:

- the consent of each affected Holder may be required with respect to (i) changes in interest rates, amortization schedule, final maturity or Holder indemnity rights against the Borrower, (ii) any change affecting the senior secured ranking of the Guaranteed Obligation or the priority of payments under the Loan Agreement, or (iii) any release of collateral the result of which could reasonably be expected to leave the Guaranteed Obligation less than fully secured;
- the Loan Agreement shall provide for usual and customary automatic acceleration upon the occurrence of a bankruptcy filing or other insolvency events;
- the Loan Agreement may provide that, in the event of a default by the Borrower on its obligation to pay any principal amount of, or interest on, the Guaranteed Obligation, then the following will apply for so long as such default continues uncured:
 - in the event that DOE does not accelerate the maturity of the Guaranteed Obligation and exercise remedies against the Borrower and the collateral within 90 days following such payment default, then a majority in interest of the Holders may require that DOE meet and discuss with them (telephonically or otherwise) their preferred course of action, provided that DOE's exercise of its rights, including the right to continue forbearance, shall nonetheless be undertaken in its sole discretion;
 - in the event that DOE does not accelerate and exercise remedies within 180 days following such payment default, then the Holders by unanimous vote may take action to accelerate the Guaranteed Obligation and exercise remedies; and
 - in the event that DOE does not accelerate and exercise remedies within 270 days following such payment default, then two thirds in interest of the Holders may vote to accelerate and exercise remedies; and
- other than in exigent circumstances, in the event DOE intends to grant an amendment of or waiver under the Loan Agreement, or to accelerate the maturity of the Guaranteed Obligation and direct the exercise of remedies, DOE will notify the Administrative Agent and provide the Holders with a reasonable period of time and opportunity to be heard as to their preferred course of action, provided that DOE's exercise of its rights shall nonetheless be undertaken in its sole discretion.

Remedies: In addition to other usual and customary remedies available to secured creditors, the Loan Documentation shall include appropriate collateral access and project step-in rights necessary to

provide DOE with the option to assume control (through the appointment of a substitute contractor or operator, or otherwise) over the construction or operation of the Eligible Project following an event of default.

DOE Fees and Expenses: The Loan Agreement shall obligate the Borrower to pay the following fees and expenses to or for the benefit of DOE:

- the maintenance fee (Third Fee), payable to DOE annually in advance beginning on the closing date, as described in Section VIII of the Solicitation;
- the fees of DOE's Master Servicer (as described in Attachment K), to be paid on a quarterly basis pursuant to a fee agreement (substantially in the form to be posted on the Program Website in due course) to be entered into at closing between the Borrower and the Master Servicer for the cost of servicing and monitoring the Guaranteed Obligation during the construction, startup, commissioning and operation of the Eligible Project; and
- if the Eligible Project or the Borrower experiences technical, financial, legal or other events which require DOE to incur additional time or expenses (including third-party expenses), DOE shall be entitled to reimbursement in full of (i) such amounts as DOE reasonably determines are its additional internal administrative costs (including, without limitation, any costs incurred in determining whether such events alter the Credit Subsidy Cost (as defined below)) and (ii) the fees and expenses of its independent consultants and outside legal counsel, and the additional fees of the Master Servicer, which in each case DOE may require that the Borrower pay directly to such third parties.

Credit Subsidy Costs: The Loan Agreement shall provide that any amendment to or waiver of its terms and conditions that constitutes a "modification" within the meaning set forth in Section 502(9) of FCRA and OMB Circular A-11 may be subject to the availability to DOE of funds appropriated by Congress to meet an increase, if any, in the Credit Subsidy Cost of the Guaranteed Obligation.

Conditions Precedent, Representations and Warranties: In addition to usual and customary provisions, and those specified below, the Loan Agreement shall include conditions precedent and representations and warranties concerning compliance with all of the requirements of Title XVII, including Section 1705 but excluding Section 1703, the Recovery Act and Attachment G, including Section 609.10(d), (e) and (f) thereof. As a condition precedent to DOE's issuance of its loan guarantee, all such representations and warranties shall be true as of the closing date. These shall include, but not limited to, the following:

The Borrower hereby represents and warrants, in accordance with Section 609.10(d)(21) of the Attachment G, that neither the Borrower nor any person or entity which controls or is controlled by the Borrower has outstanding any delinquent Federal debt, including, without limitation, under the Internal Revenue Code of 1986, as amended, unless the delinquency has been resolved with the appropriate Federal agency in accordance with the standards of the Debt Collection Improvement Act of 1996, as amended.

Agents: The Lead Lender is required to serve also as the Administrative Agent under the Loan Agreement and Loan Guarantee Agreement. In addition to the duties usually and typically required of administrative agents in connection with comparable financings, the Administrative Agent shall be required under the Loan Agreement to perform the reporting duties set out in Attachment K. These duties include the requirement that, in connection with any amendment or waiver requested by the

Borrower, or if there occurs a default or event of default, the Administrative Agent prepare and deliver to DOE a written analysis of the precipitating events and expected consequences, and a recommendation as to the appropriate course of action, together with any proposed amendment or waiver documentation. DOE shall not be liable for, or provide, indemnification of any party, including any agent (e.g., Administrative Agent, Master Servicer, collateral agent). The Master Servicer shall be included as a party to the Loan Agreement and as a secured party for purposes of the payment of its fees and expenses, and the Borrower and Holders (other than DOE as a subrogee) shall indemnify the Master Servicer to the same extent they indemnify the other agents in the transaction.

Progress Reports and Financial Statements: During the construction and start-up phases of the project, the Borrower shall provide monthly project progress reports to DOE and the Master Servicer. Each report shall be delivered within fifteen days following the end of each calendar month. The reports shall compare actual timing, cost and financing against the original budget and the previous month. Each report shall explain the reasons for any significant variances and the likely impact on the project going forward. During the operational phase of the project, the Borrower shall provide financial statements, prepared in accordance with U.S. GAAP, plus calculations of the senior debt service coverage ratio and other financial measures required under the Loan Agreement, to DOE and the Master Servicer on a quarterly basis (consisting of an income statement, balance sheet and cash flow statement, with associated notes as appropriate), with certification by the Borrower that the statements are true and correct, and accurately reflect the financial condition and results of operations of the Borrower, in all material respects. At all times, from receipt by DOE of an application until the Guaranteed Obligation is fully repaid, the Borrower will be obligated to inform DOE expeditiously (but in no event later than three business days after discovery) of any condition having, or potentially having, a material adverse effect on either the project or the ability of the Borrower to carry out its obligations. Copies of all other notices and reports required under the Loan Agreement to be delivered by the Borrower to the Administrative Agent shall be delivered also to the Master Servicer and to DOE. DOE reserves the right to require submission of additional information as it deems necessary.

FOIA: The following provision relating to the Freedom of Information Act is to be included in the Loan Agreement in satisfaction of Section 609.10(d)(19) of Attachment G:

The parties acknowledge and agree that all correspondence, books, documents, papers and records relating to the structuring, negotiation and execution of this Loan Agreement and the transactions contemplated herein, including but not limited to this Loan Agreement, the Loan Documents, the Application, Term Sheet and all supporting documentation, financial statements, audit reports of independent accounting firms, permits and regulatory approvals furnished or otherwise made available to DOE, will be handled in accordance with all applicable federal laws, rules, or regulations, including but not limited to the Trade Secrets Act, 18 U.S.C. §1905, and the Freedom of Information Act (FOIA), 5 U.S.C. §552, and DOE's implementing regulations at 10 C.F.R. 1004.

Choice of Law and Submission to Jurisdiction: The Borrower shall submit to the jurisdiction of the state and federal courts located in New York, NY and the District of Columbia, and shall waive any right to claim inconvenience of the forum. The choice of law provision in the Loan Agreement and any other transaction document to which DOE is a party, or under which it may have or come to have any rights or obligations, whether by subrogation or otherwise (other than mortgages and other similar agreements appropriately the subject of local law, which may substitute reference to such law for that of New York in the following clause), shall be as follows:

This agreement shall be governed by, and construed and interpreted in accordance with, the federal law of the United States. To the extent that federal law does not specify the appropriate rule of decision for a particular matter at issue, it is the intention and agreement of the parties hereto that the law of the State of New York shall be adopted as the governing federal rule of decision.

Certain Provisions Mandated by the Recovery Act: The following provisions are required to be incorporated into the Loan Agreement without change (other than as may be necessary to conform definitions and cross references):

Definitions:

“Buy American Provisions” means Section 1605 of Title XVI of Division A of the Recovery Act, 2 C.F.R. Sections 176.140 and 176.160, Office of Management and Budget’s Initial Implementing Guidance for the Recovery Act, M-09-10 (February 18, 2009) and Updated Implementing Guidance for the Recovery Act, M-09-15 (April 3, 2009) and, in each case, any amendment, supplement or successor thereto, including any relevant regulation or guidance which may be issued by DOE.

“Commencement of Construction” means (i) the Borrower has completed all pre-construction engineering and design, has received all necessary licenses, permits and local and national environmental clearances, has engaged all contractors and ordered all essential equipment and supplies as, in each case, can reasonably be considered necessary so that physical construction of the Eligible Project may begin (or, if previously interrupted or suspended, resume) and proceed to completion without foreseeable interruption of material duration and (ii) such physical construction (including, at a minimum, excavation for foundations or the installation or erection of improvements) at the primary site of the Eligible Project has begun (or resumed).

“Davis-Bacon Act” Subchapter IV of Chapter 31 of Section A of Subtitle II of Title 40 of the United States Code, including and as implemented by the regulations set forth in parts 1, 3 and 5 of title 29 of the Code of Federal Regulations.

“Recovery Act” The American Recovery and Reinvestment Act of 2009 (Public Law 111-5).

Representations:

Section 1.1. Davis-Bacon Act. The Borrower has taken all steps necessary to comply with, and in all material respects is in compliance with, its obligations under Section 2.2 and Attachment H¹ relating to the Davis-Bacon Act; except that Borrower shall not be required to be in compliance on the date hereof with the requirements of Section 2.2(d).

Section 1.2. Buy American Provisions. The Project does not involve the construction, alteration, maintenance, or repair of a “public building” or “public work” within the meaning of the Buy American Provisions.²

¹ Attachment H is to be incorporated as an exhibit to the Loan Agreement.

² Incorporate this provision if the Buy American Provisions are not applicable to the Eligible Project.

Covenants:³

Section 2.1 Recovery Act Reporting. *From and after the date on which Borrower and/or the Lead Lender receives written notice from DOE of the obligation to do so, the Borrower and/or the Lead Lender shall timely comply with the reporting requirements set out in Section 1512(c) of Title XV of Division A of the Recovery Act. Such reporting shall be done in accordance with the procedures set out or otherwise referenced in 2 C.F.R. Section 176.50, Office of Management and Budget's Initial Implementing Guidance for the Recovery Act, M-09-10 (February 18, 2009), Updated Implementing Guidance for the Recovery Act, M-09-15 (April 3, 2009) and Updated Implementing Guidance for the Reports on Use of Funds Pursuant to the Recovery Act, M-09-21 (June 22, 2009), and, in each case, any amendment, supplement or successor thereto. DOE may require in its notice that such reporting relate back to the date hereof. Accordingly, Borrower and/or the Lead Lender shall at all times maintain such records as may be necessary, in the event DOE issues such notice, to undertake such reporting obligations.*

Section 2.2 Davis-Bacon Act. *(a) In accordance with Section 1705(c) of Title XVII, beginning on the date hereof, all laborers and mechanics employed in the performance of the Project, including those employed by contractors and subcontractors, shall be paid wages at rates not less than those prevailing on similar work in the relevant locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act. In furtherance of this requirement, the contract clauses set out in 29 CFR 5.5(a)(1) through (10) are attached hereto as Attachment H (as modified therein) and are hereby incorporated herein as though set out in their entirety in this Section 2.2 and, as provided therein, shall be incorporated into all other Davis-Bacon Act Covered Contracts (as defined in Attachment H).*

(b) The Borrower, on DOE's behalf, shall systematically review the certified payroll records that it maintains for its own laborers and mechanics pursuant to subparagraph (b)(3)(i) of Attachment H and those that it receives for the laborers and mechanics of any Contract Party (as defined in Attachment H) pursuant to subparagraph (b)(3)(ii)(A) of Attachment H. The Borrower shall promptly notify the DOE contracting officer in writing when it receives any complaint related to non-compliance with the Davis-Bacon Act, or discovers in the course of its systematic review of the certified payroll records an incident that the Borrower reasonably believes to be a case of such non-compliance and which, in each case, the Borrower cannot resolve on its own, and shall forward to the DOE contracting officer (1) the complaint or a written summary of the non-compliant incident, (2) a summary of the Borrower's investigation into such complaint or such incident, and (3) the relevant certified payroll records. Certified payroll records maintained by the Borrower shall be preserved for three years after completion of work. Notwithstanding anything to the contrary in subparagraph (b)(3)(ii)(A) of Attachment H, the Borrower shall maintain such certified payroll records at a site designated by the Borrower and shall make such records available to DOE and the U.S. Department of Labor when necessary, and upon request, for purposes of an investigation or audit of compliance with prevailing wage requirements. Certified payroll records maintained by the Borrower shall be considered federal government records for the purposes of the Freedom of Information Act, 42

³ These covenants should be subject to a cure period of 30 days from discovery before maturing into an event of default.

U.S.C. 552. The Borrower shall provide such records to DOE within five days of receipt of any request for such records from DOE.

- (c) *In the event the Loan Guarantee Agreement terminates as a consequence of the Borrower's failure to deliver on or before September 30, 2011 a written certification to DOE that Commencement of Construction has occurred, such termination (and any corresponding event of default under this Loan Agreement) shall not be deemed to release the Borrower or any Contract Party (as defined in Attachment H) from their respective obligations under this Section 2.2 and Attachment H, nor from any liability for any breach by any such party of the terms and provisions of this Section 2.2 and Attachment H, in each case, as required to be performed during the period prior to such termination.*
- (d) *If and to the extent performance of the Project began prior to the date hereof, Borrower shall, prior to the first draw on or advance under the Guaranteed Obligation, retroactively adjust, and cause each Contract Party (as defined in Attachment H) to retroactively adjust, the wages of each affected laborer and mechanic employed in the performance of the Project prior to the date hereof, and pay or cause to be paid to each such laborer or mechanic such additional wages, if any, as are necessary for such laborers and mechanics to have been paid at rates not less than those prevailing on similar work in the relevant locality during the period such work was performed, as determined by the Secretary of Labor in accordance with the Davis-Bacon Act in the wage determination(s) annexed to Schedule X to the Loan Agreement; provided, however, that this clause (d) shall not apply if and to the extent the Borrower obtains an exemption pursuant to the provisions of 29 C.F.R. 1.6(g).*

Section 2.3 Buy American Provisions. *The Borrower shall timely comply with the requirements set out in clause (a) of Section 1605 of Title XVI of Division A of the Recovery Act; provided, however, that such compliance shall not be required if and to the extent waived pursuant to clause (b) thereof or rendered inapplicable pursuant to clause (d) thereof. Such compliance, or relief therefrom, shall be in accordance with the Buy American Provisions.⁴*

Conditions and Events of Default:

Section 3.1 Conditions to Loan Advances. *The making of each draw on or advance under the Guaranteed Obligation shall be subject to the prior satisfaction of the condition precedent that DOE and the Administrative Agent shall have received, in form and substance satisfactory to DOE, a written certification from a responsible officer of the Borrower stating, to the best of such officer's knowledge after due inquiry as of a date not earlier than fifteen (15) Business Days prior to the relevant draw or advance date, that (a) the Borrower has timely complied in all material respects with (i) its reporting obligations under Section 2.1 with respect to the Recovery Act, (ii) the requirements set out in Section 2.2 and Attachment H with respect to the Davis-Bacon Act and (iii) the Buy American requirements set out in Section 2.3⁵ and (b) with respect to the first such draw or advance under the Guaranteed Obligation,(i)*

⁴ *Incorporate this provision if the Buy American Provisions are applicable to the Eligible Project.*

⁵ *Incorporate clause (iii) if the Buy American Provisions are applicable to the Eligible Project.*

Commencement of Construction has occurred on or before September 30, 2011 and (ii) Borrower has complied in all material respects with the requirements set out in Section 2.2(d) with respect to the payment of back wages pursuant to the Davis-Bacon Act or has obtained an exemption from such requirements.

Section 3.2 Failure to Commence Construction. *It shall be an event of default under the Loan Agreement if the Borrower shall fail to deliver on or before September 30, 2011 a written certification to DOE that Commencement of Construction has occurred.*

Section 2 - Loan Guarantee Agreement

Loan Guarantee Agreement: DOE's forms of the Loan Guarantee Agreement (one each for Guaranteed Obligations with fixed rate and floating rate interest) will be posted on its Program Website at: <http://www.lgprogram.energy.gov>. The Loan Guarantee Agreement may not be altered by a Lender-Applicant. The terms and conditions of an Lender-Applicant's other loan documentation are to be conformed to those of the Loan Guarantee Agreement.

Parties to the Loan Guarantee Agreement: DOE, as guarantor, the Holders, as beneficiaries, and the Administrative Agent, as agent for the Holders, shall be parties to the Loan Guarantee Agreement.

Full Faith and Credit: The guarantee of DOE issued pursuant to the terms of the Loan Guarantee Agreement will be irrevocable and unconditional and will expressly carry the full faith and credit of the United States of America.

Principal and Interest Coverage: The DOE guarantee will cover up to eighty percent (80%) of the unpaid principal of a Guaranteed Obligation, including in circumstances where such principal becomes due as the result of an acceleration of the Guaranteed Obligation. The DOE guarantee also will cover up to eighty percent (80%) of unpaid interest on a Guaranteed Obligation calculated to the date of payment by DOE at the rate determined in accordance with the terms of the Loan Agreement, but excluding any default premium (which will be for the account of DOE). Pursuant to Section 609.10(e)(1) of Attachment G, the DOE loan guarantee will not cover any fees, costs, expenses, make-whole amounts, prepayment premiums, breakage costs, indemnified liabilities, default interest or any other similar amounts payable under the Loan Documents.

Interest/Payment Options: The Lender-Applicant will have the option to elect in its application between two payment formats under the Loan Guarantee Agreement, depending upon whether interest on the Guaranteed Obligation is calculated on a fixed rate or a floating rate basis.

- If the Lender-Applicant elects in its application that interest will be paid on a floating rate basis, then DOE will pay the full amount of principal and interest due in a single payment following any payment default. In this case of a single lump sum payment, payment will be made by DOE within sixty (60) days after receipt of written demand from the Administrative Agent.
- If the Lender-Applicant elects in its application that interest will be paid on a fixed rate basis, then DOE will make payment in installments in accordance with the interest payment

provisions and principal amortization schedule set out in the Loan Agreement as though no default or acceleration had occurred. In this case of installment payments, the first installment will be made by DOE sixty (60) days after receipt of written demand from the Administrative Agent and each subsequent installment will be paid on the payment date provided for under the terms of the Loan Agreement.

In all cases payment will be made by DOE to the Administrative Agent as agent on behalf of the Holders. Written demand for payment may be made after any applicable grace period under the Loan Agreement plus five additional business days have passed without Borrower's having cured the payment default.

Subrogation: Upon the making of demand for payment under the Loan Guarantee Agreement, whether resulting in a lump sum payment or installment payments, DOE will become subrogated to all of the Holders' right, title and interest in, to and under the Guaranteed Obligation and all related loan documents, other than with respect to certain excluded claims. The rights of DOE obtained by subrogation and assignment shall be in addition to, and not to the exclusion of, all other rights of DOE set out in any of the loan documents, which shall be exercisable by DOE without regard to or need of any subrogation or assignment under the Loan Guarantee Agreement.

Revocation of Borrower Payments: DOE's loan guarantee obligation under the Loan Guarantee Agreement will be reinstated with respect to any payments of principal or interest on a Guaranteed Obligation that are rescinded or must otherwise be returned to the Borrower by the Holders as the result of a subsequent bankruptcy of the Borrower or pursuant to the final order of any court of competent jurisdiction.

Certain Transfer Restrictions: The Loan Guarantee Agreement includes certain restrictions on the rights of the Administrative Agent and the Holders to transfer interests in the Guaranteed Obligation and the DOE loan guarantee.

- The Administrative Agent will not be permitted to resign from or assign its rights and obligations under the Loan Agreement and Loan Guarantee Agreement without the prior written consent of DOE.
- Subject to DOE's prior written consent, which shall not be unreasonably withheld or delayed, Holders (as defined in 609.2 of Attachment G) will be free to assign, sell, pledge or otherwise transfer their interests in the Guaranteed Obligation and the DOE loan guarantee to any other entity which qualifies to be a Holder under Attachment J, provided that:
 - a Holder's rights under the Loan Guarantee Agreement shall not be transferred at any time, in whole or in part, disproportionately from such Holder's rights under the Loan Agreement such that DOE's loan guarantee would apply to a greater percentage of the transferee's interest in the Guaranteed Obligation than the guaranteed percentage applicable to the Guaranteed Obligation overall. Holders, however, will be free to effectively separate and convey indirect interests in the guaranteed and unguaranteed portions of a Guaranteed Obligation by transferring to other investors economic or beneficial interests, but not legal rights, in the Guaranteed Obligation and DOE loan guarantee, including, for example, by means of granting loan participations or issuing covered notes; and

- Holders will not be permitted to assign, sell, pledge or otherwise transfer its interests in the Guaranteed Obligation and the DOE loan guarantee (other than indirect interests, as described above) during the period from closing date to the date the Eligible Project enters into commercial operation plus two years, other than, with DOE's prior written consent which shall not be unreasonably withheld or delayed, to (i) another current Holder, (ii) an affiliate of the transferring Holder which meets the qualifications to be a Holder under Attachment J, or (iii) a special purpose entity wholly owned and controlled or exclusively managed by the transferring Holder.

Certifications: Each Holder (as defined in Section 609.2 of Attachment G), including any permitted assignee, will be required to provide DOE with a certification stating that it meets the qualifications to be a Holder under Attachment J and that it has and will comply with certain other federal regulatory requirements, including with respect to debarment from participation in federal programs. The form of such certification will be attached to the Loan Guarantee Agreement.

Governing Law: The Loan Guarantee Agreement will include the following governing law provision:

This agreement shall be governed by, and construed and interpreted in accordance with, the federal law of the United States. To the extent that federal law does not specify the appropriate rule of decision for a particular matter at issue, it is the intention and agreement of the parties hereto that the law of the State of New York shall be adopted as the governing federal rule of decision.

Termination: The Loan Guarantee Agreement will terminate automatically in the event that a responsible officer of Borrower has not, on or before September 30, 2011, delivered a written certification to DOE and the Administrative Agent that Commencement of Construction (as defined above) has occurred.

Attachment J

Required Qualifications of Holders and Lead Lenders of Guaranteed Obligations

UNITED STATES DEPARTMENT OF ENERGY

**REQUIRED QUALIFICATIONS OF HOLDERS AND LEAD LENDERS OF THE
GUARANTEED OBLIGATION**

Financial Institution Partnership Program Under Section 1705 of Title XVII

This Attachment J sets out the qualifications required of (i) all Holders of Guaranteed Obligations that will be considered by the DOE under this Solicitation and (ii) Lender-Applicants seeking to qualify as Lead Lenders in connection with such Guaranteed Obligations. The qualifications set out herein apply only with respect to those Guaranteed Obligations for which Applications have been submitted under this specific Solicitation.

Section 1: Holders

Each Holder (as defined in Section 609.2 of Attachment G), at the time of execution of the Loan Agreement and the Loan Guarantee Agreement (or at the time it obtains a direct interest therein), shall meet the following qualifications:

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 Title XVII and Attachment G and be in good standing with DOE and other Federal agency loan guarantee programs; and
4. Be able to demonstrate, or have access to, experience in participating in loans for commercial projects similar in size and scope to the project under consideration. For this purpose, 'participating' means (a) being a lender in a capacity as a principal with an investment at risk and (b) evaluating such loan investments primarily with regard to long-term credit risk.

Section 2: Lead Lenders

Each Lead Lender that becomes a Holder (as defined in Section 609.2 of Attachment G), at the time of the execution of the Loan Agreement and the Loan Guarantee Agreement, shall (i) have been a Lender-Applicant as defined in Section I.C of the Solicitation and (ii) meet the following qualifications of an Eligible Lender set out in Section 609.11(a)(1) through (5) of Attachment G:

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 Title XVII and Attachment G and be in good standing with DOE and other Federal agency loan guarantee programs;
4. Be able to demonstrate, or have 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.

As described more fully in Section I.C of the Solicitation, each Guaranteed Obligation is required to have at least one Holder meeting the above requirements of a Lead Lender. Such Lead Lender will act as the Administrative Agent under the Loan Agreement and the Loan Guarantee Agreement.

Section 3: Scope of Qualification

For the purposes of determining whether an entity satisfies the applicable requirements of this Attachment J, “Holder” and “Lead Lender” include: (a) an entity that itself meets such requirements, (b) the consolidated affiliates, business divisions and subsidiaries of a financial institution that meets such requirements, and (c) relevant non-consolidated entities owned, controlled or the business of which is exclusively managed by such a financial institution.

Attachment K

Guaranteed Obligation Post-Closing Servicing and Monitoring

UNITED STATES DEPARTMENT OF ENERGY

GUARANTEED OBLIGATION POST-CLOSING SERVICING AND MONITORING

Financial Institution Partnership Program Under Section 1705 of Title XVII

Master Servicer Overview

As described in Section I.C of the Solicitation and in Attachment I, Administrative Agents shall perform the primary loan administration or servicing functions, including the servicing duties set forth in Section 609.11(c) of Attachment G, with respect to their applicable Guaranteed Obligations. The dual oversight duties of the Master Servicer shall consist of servicing and loan monitoring oversight of such Administrative Agents with respect to their applicable Guaranteed Obligations issued in connection with the Solicitation. As provided in Section VIII.4 of the Solicitation, Borrowers shall be responsible under all circumstances for paying the fees and expenses of DOE's Master Servicer that are incurred in connection with their specific projects, without recourse to DOE by any party, including the Borrower, the Master Servicer and any Administrative Agent.

In coordination with multiple offices within DOE's Office of the Chief Financial Officer (e.g., LGPO, accounting, credit policy), the Master Servicer shall supervise such loan administration or servicing of Administrative Agents with respect to their Guaranteed Obligations and shall undertake such duties generally consisting of verifying payment to Holders, of principal and interest on Guaranteed Obligations and, to DOE, of certain fees as described more fully below; compliance checking and monitoring based on reports submitted; loan balancing and reconciliation with Borrowers and their Holders; intervention in payment reconciliation efforts and, if necessary, in collection efforts as interim servicer (as described below). In addition, consistent with Section 609.10(g)(2) of Attachment G, the Master Servicer shall itself undertake, and ensure that Lead Lenders, as Administrative Agents, have instituted, procedures for tracking and identifying Holders of Guaranteed Obligations in accordance with Loan Agreements.

In connection with its loan or portfolio monitoring duties, the Master Servicer shall be required to undertake duties generally consisting of periodic detailed examination of individual loans and their financial and operational aspects as they are serviced and represented to DOE by Administrative Agents as possessing a certain credit quality status for purposes of verifying certain credit and project performance aspects of special interest to the DOE; proper and timely response to events of default, requests for waivers and other events impacting the quality and proper administration of the underlying loan; and overseeing the credit administration practices of Administrative Agents to verify their compliance with standard industry best practice.

Servicing Oversight Responsibilities:

The Master Servicer is required to support DOE's Loan Guarantee Program Office (LGPO) in its management of the financial payment aspects of Guaranteed Obligations issued in connection with the Solicitation. As part of this support, the Master Servicer must oversee the collection and monitoring by Administrative Agents of all scheduled and actual payment activities of projects issued Guaranteed

Obligations in connection with the Solicitation and will be required to review and verify the timely payment by Borrowers of annual maintenance fees and extraordinary costs and expenses, in each case, as described in Section VIII of the Solicitation and in Section 1 of Attachment I under “DOE Fees and Expenses,” as well as other payments due to DOE and its agents, such as the Master Servicer. At times, the Master Servicer may be required to intervene in payment reconciliation efforts, as necessary, and provide to DOE notice of any delinquency or shortfall. In addition, the Master Servicer will also perform compliance reviews of regular reports as required in Attachment I and as provided by or through the Administrative Agents on underlying Guaranteed Obligations to ensure they comply with standardized information requirements on Borrowers and required affirmative or negative covenants and reporting requirements in Loan Agreements. Such duties will include collection and review of officer certifications and similar documents provided to Administrative Agents by individual Borrowers. The Master Servicer shall supervise the performance of Lead Lenders, as Administrative Agents, of the servicing duties set forth in Section 609.11(c)(1) to (3) of Attachment G.

Further, consistent with Section 609.10(g)(2) of Attachment G, the Master Servicer shall ensure that Lead Lenders, as Administrative Agents, have instituted procedures for tracking and identifying Holders of Guaranteed Obligations in accordance with their Loan Agreements and shall itself undertake to create and maintain a centralized system of tracking and identifying Holders of Guaranteed Obligations. Finally, the Master Servicer may be required to act as interim servicer for those Guaranteed Obligations for which the Administrative Agent has failed to perform adequately; or may be required to identify and install a replacement servicer as necessary to assure continued accurate servicing of individual Guaranteed Obligations. While primary loan administration or servicing functions will ordinarily be performed by Administrative Agents, such functions may only be delegated or assigned to third parties with the permission of the DOE in accordance with Section 609.11(g)(1) of Attachment G.

Loan Monitoring Responsibilities:

The Master Servicer will also be required to support the LGPO in capturing and verifying information on the long-term credit quality of Guaranteed Obligations issued in connection with the Solicitation that are managed by Administrative Agents as primary servicers. As required in Section 1 of Attachment I under “Progress Reports and Financial Statements,” copies of all notices and reports required under a Loan Agreement to be delivered by the Borrower to the Administrative Agent shall be delivered also to the Master Servicer and to DOE. These reports will provide standardized information on Borrower compliance with project specific affirmative and negative covenants and undertakings that are conditions of the underlying Guaranteed Obligations as set forth in the Loan Agreements. These reports, which will include officers’ certificates and similar reports from the underlying Borrowers, will be collected and reviewed by the Master Servicer as part of its servicing duties. However, prudent loan monitoring and portfolio management practices require regular detailed reviews of the future repayment prospects of the Guaranteed Obligations issued in connection with the Solicitation. In performing the loan monitoring and portfolio management duties, the Master Servicer will ensure that individual Guaranteed Obligations and the portfolio as a whole and discreet sub-segments of the portfolio have maintained the anticipated level of credit quality at the time the DOE loan guarantee was issued or will monitor their potential to improve or deteriorate in credit quality. In addition, the Master Servicer will examine the credit administration practices of Administrative Agents to verify their compliance with standard industry best practice. As DOE gains experience under the first FIPP Solicitation, and to the extent DOE commits any loan monitoring decision to the judgment of individual Administrative Agents, the Master Servicer shall be required to examine the internal credit policy standards and procedures and implementation of such policies and procedures by the

Administrative Agents in order to provide appropriate assurance to the LGPO that operational and market risks are sufficiently mitigated to prevent undue risk to the applicable Guaranteed Obligation and to DOE's loan portfolio under the Solicitation.

Finally, the Master Servicer shall oversee the Administrative Agent or other servicers' (including, for example, collateral agents) obligations under Section 609.16(a) of Attachment G to undertake those actions necessary to perfect and maintain liens, as applicable, on assets which are pledged as collateral for Guaranteed Obligations and under Section 609.17 to provide audit and access to records as required thereunder.

Payment of the Master Servicer:

As provided in Section VIII.4 of the Solicitation, Borrowers shall be responsible under all circumstances for paying the fees and expenses of DOE's Master Servicer that are incurred in connection with their specific projects, without recourse to DOE by any party, including the Borrower, the Master Servicer and any Administrative Agent. For duties associated with the servicing and loan monitoring roles of the Master Servicer, payment for such services is expected to be collected by an Administrative Agent from its Borrower and remitted to the Master Servicer on a quarterly basis pursuant to an agreement (substantially in the form to be posted on the Program Website in due course) to be entered into at closing between the Borrower and the Master Servicer. The basis of such fees will be determined based on market rates. In addition, as described in Section VIII of the Solicitation and in Section 1 of Attachment I under "DOE Fees and Expenses," the Master Servicer shall be entitled to payment by the Borrower to the extent the project experiences technical, financial, legal or other events (e.g., engineering failure or financial workouts) that require time or expenses beyond standard monitoring.