

## Department of Energy

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as applicable, on or before December 31, 2007; provided, that DOE accepted the Pre-Application and invited an Application pursuant to such Pre-Application.

(d) Part 1024 of chapter X of title 10 of the Code of Federal Regulations shall not apply to actions taken under this part.

### § 609.2 Definitions.

*Act* means Title XVII of the Energy Policy Act of 2005 (42 U.S.C. 16511–16514), as amended.

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

(1) The evaluation of a Pre-Application, if a Pre-Application is requested in a solicitation, and an Application for a loan guarantee;

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

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

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

*Application* means a comprehensive written submission in response to a solicitation or a written invitation from DOE to apply for a loan guarantee pursuant to § 609.6 of this part.

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

*Commercial Technology* means a technology in general use in the commercial marketplace in 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 in the United States in the same general application as in the proposed project, and has been in oper-

ation in each such commercial project for a period of at least five years. The five-year period shall be measured, for each project, starting on the in service date of the project or facility employing that particular technology. For purposes of this section, commercial projects include projects that have been the recipients of a loan guarantee from DOE under this part.

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

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

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

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

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

*DOE* means the United States Department of Energy.

*Eligible lender* means:

(1) Any person or legal entity formed for the purpose of, or engaged in the

business of, lending money, including, but not limited to, commercial banks, savings and loan institutions, insurance companies, factoring companies, investment banks, institutional investors, venture capital investment companies, trusts, or other entities designated as trustees or agents acting on behalf of bondholders or other lenders; and

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

(3) The Federal Financing Bank.

*Eligible project* means a project located in the United States that employs a New or Significantly Improved Technology that is not a Commercial Technology, and that meets all applicable requirements of section 1703 of the Act (42 U.S.C. 16513), the applicable solicitation and this part.

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

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

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

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

*Intercreditor Agreement* means any agreement or instrument among DOE and one or more other persons providing financing or other credit arrangements or that otherwise provides for rights of DOE, in each case, in form and substance satisfactory to DOE and

entered into or accepted by DOE in connection with a DOE loan guarantee upon a determination by DOE that such agreement or instrument is reasonable and necessary to protect the interests of the United States, and addressing such matters as collateral sharing, priorities (subject always to Section 1702(d)(3) of Title XVII) and voting rights among creditors and other intercreditor arrangements, as such agreement or instrument may be amended or modified from time to time with the consent of DOE.

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

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

*New or Significantly Improved Technology* means a technology concerned with the production, consumption or transportation of energy and that is not a Commercial Technology, and that has either:

(1) Only recently been developed, discovered or learned; or

(2) Involves or constitutes one or more meaningful and important improvements in productivity or value, in comparison to Commercial Technologies in use in the United States at the time the Term Sheet is issued.

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

*Pre-Application* means a written submission in response to a DOE solicitation that broadly describes the project proposal, including the proposed role of a DOE loan guarantee in the project,

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and the eligibility of the project to receive a loan guarantee under the applicable solicitation, the Act and this part.

*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 part. Project costs do not include costs for the items set forth in § 609.12(c) of this part.

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

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

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

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

### § 609.3 Solicitations.

(a) DOE may issue solicitations to invite the submission of Pre-Applications or Applications for loan guarantees for Eligible Projects. DOE must issue a solicitation before proceeding with other steps in the loan guarantee process including issuance of a loan guarantee. A Project Sponsor or Applicant may only submit one Pre-Application or Application for one project using a particular technology. A Project Sponsor or Ap-

plicant, in other words, may not submit a Pre-Application or Application for multiple projects using the same technology.

(b) Each solicitation must include, at a minimum, the following information:

(1) The dollar amount of loan guarantee authority potentially being made available by DOE in that solicitation;

(2) The place and time for response submission;

(3) The name and address of the DOE representative whom a potential Project Sponsor may contact to receive further information and a copy of the solicitation;

(4) The form, format, and page limits applicable to the response submission;

(5) The amount of the application fee (First Fee), if any, that will be required;

(6) The programmatic, technical, financial and other factors the Secretary will use to evaluate response submissions, including the loan guarantee percentage requested by the Applicant and the relative weightings that DOE will use when evaluating those factors; and

(7) Such other information as DOE may deem appropriate.

### § 609.4 Submission of Pre-Applications.

In response to a solicitation requesting the submission of Pre-Applications, either Project Sponsors or Applicants may submit Pre-Applications to DOE. Pre-Applications must meet all requirements specified in the solicitation and this part. At a minimum, each Pre-Application must contain all of the following:

(a) A cover page signed by an individual with full authority to bind the Project Sponsor or Applicant that attests to the accuracy of the information in the Pre-Application, and that binds the Project Sponsor(s) or Applicant to the commitments made in the Pre-Application. In addition, the information requested in paragraphs (b) and (c) of this section should be submitted in a volume one and the information requested in paragraphs (d) through (h) of this section should be submitted in a volume two, to expedite the DOE review process.

(b) An executive summary briefly encapsulating the key project features