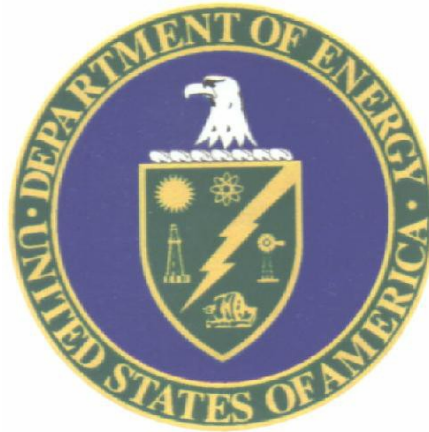


**LOAN GUARANTEE  
SOLICITATION ANNOUNCEMENT**



**U.S. Department of Energy  
Loan Programs Office**

**FEDERAL LOAN GUARANTEES FOR  
TRIBAL ENERGY DEVELOPMENT PROJECTS**

**Solicitation Number: 89303018RLP000005  
OMB Control Number: 1910-5134  
OMB Expiration Date: January 31, 2020  
Announcement Type: Initial**

**Issue Date: July 17, 2018  
First Part I Submission Due Date: September 19, 2018<sup>1</sup>  
Last Part I Submission Due Date: November 1, 2019  
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<sup>1</sup> Please refer to Section V.A for multiple due dates regarding Part I submissions.

<sup>2</sup> Please refer to Section V.A for multiple due dates regarding Part II submissions.

<b>I.</b>	<b>Solicitation Description.....</b>	<b>1</b>
A.	Purpose of Solicitation .....	1
B.	TELGP Program Application Process and Participant Roles.....	1
C.	Finance Considerations for Applications .....	3
<b>II.</b>	<b>Eligibility Information .....</b>	<b>4</b>
A.	Eligible Borrowers. ....	4
B.	Eligible Projects. ....	4
<b>III.</b>	<b>Application Requirements.....</b>	<b>5</b>
A.	Required Information and Materials .....	5
B.	Compliance with NEPA Regulations .....	5
C.	Davis-Bacon Requirements .....	6
D.	Cargo Preference Act of 1954 Requirements.....	7
<b>IV.</b>	<b>Application and Evaluation Process.....</b>	<b>7</b>
A.	Application Components.....	7
B.	Loan Guarantee Process Overview .....	8
C.	Summary of Application Evaluation Process.....	9
D.	Review of Financial Factors (Weighting: 45%).....	11
E.	Review of Technical Factors (Weighting: 35%).....	12
F.	Review of Programmatic Factors (Weighting: 20%) .....	13
G.	Review of Policy Factors .....	13
H.	Review and Determination to Proceed.....	14
I.	Notification.....	14
<b>V.</b>	<b>Application Schedule and Instructions .....</b>	<b>14</b>
A.	Application Submission Schedule.....	14
B.	Electronic Application Submissions.....	15
C.	Registrations.....	16
D.	Formatting Instructions .....	16

E.	Multiple Applications.....	18
F.	Required Certification .....	18
<b>VI.</b>	<b>Fees, Costs and Expenses.....</b>	<b>18</b>
A.	Fees.....	18
B.	Treasury Wiring Instructions.....	19
C.	Loan Guarantee Credit Subsidy Cost .....	20
D.	Costs of Independent Consultants and Outside Counsel to DOE.....	20
E.	Extraordinary Expenses.....	20
F.	Other Agents’ Fees .....	21
<b>VII.</b>	<b>Additional Information.....</b>	<b>21</b>
A.	Government Right to Reject or Negotiate .....	21
B.	Commitment of Public Funds.....	21
C.	Procurement or Financial Assistance Award .....	21
D.	Warning Regarding False Statements .....	21
E.	Restrictions on Disclosure and Use of Information.....	21
F.	Burden Disclosure Statement .....	22
G.	Questions .....	23
<b>VIII.</b>	<b>References .....</b>	<b>23</b>
 ATTACHMENTS		
ATTACHMENT A – APPLICATION REQUIREMENTS		
ATTACHMENT B – NEPA GUIDANCE		
ATTACHMENT C - APPLICABLE PROVISIONS OF THE TITLE XVII RULE		
ATTACHMENT D - DAVIS-BACON REQUIREMENTS		
ATTACHMENT E – SPECIFIED TERMS AND CONDITIONS OF GUARANTEED OBLIGATIONS		
ATTACHMENT F – REQUIRED QUALIFICATIONS OF LEAD LENDERS AND HOLDERS		
ATTACHMENT G – POST-CLOSING SERVICING AND MONITORING		

UNITED STATES DEPARTMENT OF ENERGY

FULL ANNOUNCEMENT

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Loan Guarantee Solicitation for Applications for Federal Loan Guarantees for Tribal Energy Development Projects

Solicitation Number: **89303018RLP000005**

**I. Solicitation Description**

**A. Purpose of Solicitation**

This solicitation announcement (including all Attachments, the “*Solicitation*”) invites the submission of applications from qualified financial institutions for partial, risk-sharing loan guarantees from the United States Department of Energy (“*DOE*” or the “*Department*”) under Section 2602(c) of the Energy Policy Act of 1992, as amended (25 USC Section 3502(c)) (the “*Act*”), in support of debt financing for tribal energy development projects, as described in this Solicitation, that are located in the United States. The Act authorizes a new federal loan guarantee program (the “*Tribal Energy Loan Guarantee Program*” or “*TELGP*”) intended to benefit federally recognized Indian tribes and Alaska Native corporations, by increasing the capacity of the commercial debt markets for their energy development initiatives. Through TELGP, DOE may provide up to two billion dollars (\$2,000,000,000), in aggregate, in partial loan guarantees. Eight million five hundred thousand dollars (\$8,500,000) in appropriated funds is available to pay the Credit Subsidy Costs (as defined in Attachment C) associated with such loan guarantees.

DOE is implementing the Act through this Solicitation, which governs the issuance of loan guarantees under the Act. All Applicants are encouraged to review and become familiar with the requirements of the Act and this Solicitation.

The Act authorizes the Secretary of Energy (the “*Secretary*”) to issue partial loan guarantees of non-federal loans made to federally recognized Indian tribes and Alaska native corporations, “for energy development.” Accordingly, this Solicitation seeks partial, risk-sharing loan guarantee applications from eligible financial institutions with respect to projects meeting the requirements set forth herein.

Copies of the authorities cited herein may be found at [www.energy.gov/LPO/TELGP](http://www.energy.gov/LPO/TELGP) as of the date of this Solicitation (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 in the body of this Solicitation herein shall have the meanings ascribed to them in Attachment C.

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.

**B. TELGP Program Application Process and Participant Roles**

For this Solicitation, DOE will implement TELGP by working directly with qualified financial institutions through a set of procedures modelled on those previously established by DOE in its Financial Institution Partnership Program (“*FIPP*”) for the implementation of DOE’s loan guarantee program

established pursuant to Section 1705 of Title XVII of the Energy Policy Act of 2005, 22 U.S.C. 16511-16514, as amended (“*Title XVII*”).

Based on FIPP, DOE has developed an application process that will evaluate the Applicant’s analysis of the proposed borrower’s ability to repay the Guaranteed Obligation and any other project debt, the Applicant’s and proposed borrower’s ability to meet the requirements of the Act and those set forth in this Solicitation, as well as the proposed loan guarantee’s satisfaction of DOE’s loan underwriting criteria.

The TELGP application and evaluation process described in this Solicitation, including but not limited to the provisions of Attachment C (the “*Application Framework*”), borrows substantially from the regulations adopted by DOE to implement the Title XVII loan guarantee program, found at 10 CFR 609 (the “*Title XVII Rule*”). Nevertheless, the Application Framework implements the Act and does not replace or change, and is not intended in any way to replace or change, the fundamental requirements of the Act. Accordingly, the Application Framework should be viewed solely as a set of additional standards and procedures designed to assist DOE in implementing TELGP as efficiently and prudently as possible, consistent with the objectives of the Act.

In general, the Application Framework is intended to expedite the loan guarantee process and expand capacity in the senior debt financing markets for the efficient and prudent financing of eligible tribal energy development. This objective will be primarily accomplished, through the Application Framework, by specifying particular roles for financial institutions participating in a project for which a loan guarantee is sought under the Solicitation (referred to in this Solicitation as a “*Project*”) and establishing the applicable qualifications for such participants. The key features of the Application Framework are described below.

**Lenders as Applicants.** First, an application under this Solicitation may be submitted exclusively by a financial institution or tribal lender that meets the qualifications of a “Lead Lender” set forth in Attachment F to this Solicitation, which will fund and hold all or a portion of a debt obligation that is the subject of DOE’s partial guarantee (i.e., the “*Guaranteed Obligation*,” as more fully defined in Attachment C) in accordance with the requirements in Attachment E and as set forth in a written agreement entered into between DOE and the Lead Lender (i.e., the “*Loan Guarantee Agreement*”) as more fully defined in Attachment C) and related documentation. When a loan guarantee under this Solicitation is issued at closing, such applicant (referred to in this Solicitation and application form interchangeably as the “*Applicant*” or “*Lender Applicant*”) becomes a Holder and the Lead Lender, in each case as defined in Attachment C. Each Guaranteed Obligation is generally expected to have one Lead Lender, which 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 Attachment F. Proposed Borrowers and Project Sponsors may not apply directly to DOE under this Solicitation but must instead work with financial institutions satisfying the qualification requirements of a Lead Lender in order to access a loan guarantee under TELGP.

In order to participate in this 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. Specific qualifications for Lead Lenders and Holders under this Solicitation are described in Attachment F. The qualifications are intended to ensure that each such financial institution is demonstrably able to fulfill its expected role. Financial institutions that are interested in participating in this Solicitation should refer to Attachment F to determine their qualification status.

Lead Lenders will also have direct, continuing obligations to DOE and its agents, such as the “Master Servicer” (as described in Attachment G), with regard to servicing and monitoring the Guaranteed

Obligation and the project being financed.

**Risk Sharing.** Any DOE loan guarantee issued under this Solicitation will be partial and risk-sharing. Therefore, the 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. Applicants and other Holders 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, as if the Guaranteed Obligation were not partially guaranteed.

The 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 Solicitation, the Applicant is also expected to (a) ensure that the Guaranteed Obligation and the associated documentation conform to the requirements of TELGP, including the provisions of Attachment E, in addition to the usual and customary provisions that a reasonable and prudent lender would ordinarily require, and (b) 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 a loan guarantee under this Solicitation. Certain required and specified terms and conditions of the Guaranteed Obligation are found in Attachment E.

### **C. Finance Considerations for Applications**

Loan guarantees issued under TELGP must satisfy specific finance requirements as set forth in Attachment C, particularly Section 609.8(c) thereof, and an Applicant should give consideration to the ability of the Borrower and proposed project to satisfy such requirements in responding to this Solicitation. For example, as required by Section 609.8(c)(7) of Attachment C, the Borrower must pledge collateral or surety necessary to secure the repayment of the Guaranteed Obligation, and, consistent with Section 609.8(c)(17) of Attachment C, the Project Sponsors must make a significant investment of Equity (as defined in Section 609.2 of Attachment C) in the project.

For this Solicitation, the portion of a Guaranteed Obligation that may be guaranteed by DOE is limited to no more than ninety percent (90%) 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. Applicants should not assume that DOE will accept modifications to such standard terms to accommodate tax-oriented investment structures.

Generally, DOE expects in relation to each loan guarantee under TELGP 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 TELGP and this Solicitation.

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

## **II. Eligibility Information**

Before seeking a loan guarantee, Applicants are strongly encouraged to verify that their proposed projects satisfy each of the threshold determinations set forth in Section 609.5(a) of Attachment C.

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

### **A. Eligible Borrowers.**

Loan guarantees under this Solicitation are available for loans made to Indian tribes or Alaska Native corporations that are recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians, or duly authorized and existing corporate entities, wholly-owned or controlled by the above (“*Eligible Borrowers*”).

### **B. Eligible Projects.**

Loan guarantees under this Solicitation are available only for loans made for the financing of an “Eligible Project.” An “*Eligible Project*” under this Solicitation consists of an energy development project that

1. is located in the United States at one or more locations, which may include Indian lands; provided that a project that is comprised of installations or facilities at multiple location must be constructed or deployed pursuant to an integrated and comprehensive business plan;
2. is wholly or partially owned by an Eligible Borrower; and
3. would be 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.

**Examples of energy development activities.** For purposes of this Solicitation, “energy development” is understood to encompass a broad range of projects and activities for the development of energy resources, products, and services. 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 Applicant will be selected for the issuance of a loan guarantee.

- *Electricity generation, transmission and/or distribution facilities, utilizing renewable or conventional energy sources*
- *Energy storage facilities, whether or not integrated with any of the above*
- *Energy resource extraction, refining or processing facilities*
- *Energy transportation facilities, including pipelines*
- *District heating and cooling facilities*
- *Cogeneration facilities*
- *Distributed energy project portfolios, including portfolios of smaller distributed generation and storage facilities employed pursuant to a unified business plan*

These examples are not intended to be, and are not, exclusive or limiting. They are mentioned solely with the intent of identifying types of projects that could be eligible, subject to technical review.

**Refinancing of existing projects.** Projects that have completed construction are not eligible for a DOE loan guarantee under this Solicitation. DOE will not issue loan guarantees to support or refinance Projects that have already been fully financed; however, DOE may issue loan guarantees for the financing of acquisitions involving the substantial improvement or modification of existing facilities.

**Location of projects.** Projects that are not located on Indian lands and do not provide energy services to Indian lands or facilitate the development of energy resources located on Indian lands may qualify as Eligible Projects, but Applicants seeking loan guarantees with respect to such Projects are strongly encouraged to demonstrate in their Applications the measurable benefits of the Project to one or more tribes, as applicable, for DOE's consideration in its review of Policy Factors, as described in Section IV.G of this Solicitation

### **III. Application Requirements**

This Solicitation requires Applicants to submit timely information in sufficient detail to support a thorough analysis of a proposed Loan Guarantee and a Project's compliance with the objectives and requirements established by the Act and this Solicitation, as well as the rigorous underwriting criteria appropriate for projects of comparable scale. All information that DOE collects will be used and stored in accordance with DOE policies and procedures.

#### **A. Required Information and Materials**

**Required Materials.** Attachment A sets forth the information and materials DOE requires from an Applicant for the Applicant to demonstrate compliance with the information collection requirements this Solicitation.

**Additional Requested Information.** In addition to information requested in this Solicitation, each Applicant may also be required to submit additional information subsequently requested by DOE in order to clarify an Application.

**Information Provided to Applicant.** With respect to information required to be provided by Applicant with respect to other parties, including the Borrower, the Project Sponsors and other Project Participants, the Applicant should consider and discuss the basis for its knowledge about such parties and matters. In cases where Applicants have received certifications from such parties with respect to information provided to the Applicant for use in the Applicant's evaluation of a proposed loan or for use in responding to this Application, or the Applicant has undertaken to verify such information independently, the Applicant is encouraged to describe the basis for its own submission and certifications of such information in response to this Solicitation.

#### **B. Compliance with NEPA Regulations**

The National Environmental Policy Act ("*NEPA*") requires federal agencies to consider the potential environmental impacts of their proposed actions. DOE must complete NEPA review before it makes a decision to provide a loan guarantee. Therefore NEPA compliance is integrated into DOE's Loan Guarantee Program decision-making procedures to ensure that a project's environmental impacts are properly considered.

1. There are three possible levels of NEPA for an Applicant's Project:



- a) Environmental Impact Statement (“**EIS**”): For projects expected to have significant effects on the quality of the human environment (biological, physical, and socio-cultural resources);
  - b) Environmental Assessment (“**EA**”): For projects with the potential to significantly impact biological, physical, and socio-cultural resources; and
  - c) Categorical Exclusion (“**CX**”): For projects that meet the conditions for excluding the requirement to prepare an EA or EIS because analysis of similar actions has determined such actions will not have significant impacts (e.g., re-equipping and retooling within existing facilities).
2. The NEPA review process begins once the Project has been accepted into the continued due diligence phase following Part II review. If DOE invites an Applicant to begin negotiations for a loan guarantee, unless an EA or EIS has been prepared for the Project by another federal agency, DOE will evaluate the Project to determine the appropriate level of NEPA review required.
  3. The Applicant, with DOE oversight, is responsible for providing all necessary analysis and documentation to comply with NEPA and the applicable implementing regulations in the CFR (40 CFR 1500-1508 and 10 CFR 1021).
  4. An EIS typically requires an 18-24 month processing time, and an EA typically requires 6-9 months. Examples of projects normally requiring an EA or an EIS can be found in the DOE NEPA implementing regulations at 10 CFR 1021, Appendices C and D to Subpart D, respectively. A list of actions potentially eligible for categorical exclusion to the EA or EIS requirements can be found at 10 CFR 1021 Appendix B to Subpart D.
  5. Once DOE initiates the NEPA review process, Applicants should consult with DOE before commencing any work on the Project site (beyond preliminary design activities). Such consultation is necessary as certain actions that could cause adverse environmental impacts or limit the choice of available alternatives for the Project may not be allowable during the NEPA review process and could result in discontinuing consideration of an Application or terminating an outstanding Conditional Commitment.
  6. NEPA review must be completed before a loan guarantee can be issued.

Additional information on the NEPA process for loan guarantee projects is available in [Attachment B](#) and on the Program Website.

### **C. Davis-Bacon Requirements**

To the extent required by applicable federal law, all laborers and mechanics employed by contractors and subcontractors in the performance of construction work financed in whole or in part by a loan guaranteed under the Act must be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code (the “**Davis-Bacon Act**”). The Loan Guarantee Agreement and related loan documentation will require the Borrower to make representations and warranties, agree to 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 Part 5 and the wage determination schedule(s) that are applicable to the Project, including all requirements set forth in 29 CFR 5.5(a), as tailored in [Attachment D](#) for

incorporation into Loan Agreements expected to be entered into under this Solicitation and incorporated by reference into the Davis-Bacon Act provisions in Attachment D 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), to the extent applicable to a the Project, the Davis-Bacon Act obligations described above for construction work financed in whole or in part with such a loan guarantee 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 the requirement to comply prior to closing of the DOE loan guarantee is available if the Administrator of the Wage and Hour Division, Employment Standards Administration, United States Department of Labor (“DOL”) finds that it is necessary and proper in the public interest to prevent injustice or undue hardship and there is no evidence of intent to apply for federal funding or assistance prior to the start of construction. For Projects subject to the Davis-Bacon Act, the Borrower will also be required to insert the contract clauses in 29 CFR 5.5(a), as tailored in Attachment D, 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) and is responsible for such compliance by any such contractor, subcontractor and other entity. Copies of these authorities may be found at [https://www.dol.gov/dol/cfr/Title\\_29/Chapter\\_I.htm](https://www.dol.gov/dol/cfr/Title_29/Chapter_I.htm), and a copy of 29 CFR 5.5(a), as tailored for this Solicitation, appears in Attachment D. Applicants should visit the DOL website at <http://www.dol.gov/whd/govcontracts/dbra.htm> for additional guidance regarding the Davis-Bacon Act and its related acts.

#### **D. Cargo Preference Act of 1954 Requirements**

Applicants and Borrowers should be aware that Projects that receive a loan guarantee under this Solicitation may be required to comply with the Cargo Preference Act of 1954, which establishes certain requirements for the use of U.S. flagged vessels in the movement of cargo in international waters. These requirements may apply to shipments contracted for or made prior to receiving a loan guarantee. DOE urges Applicants and their borrowers to contact the Maritime Administration directly to ensure that relevant project agreements provide for compliance with the Cargo Preference Act.

General information on cargo preference can be found at the Maritime Administration’s web site: [www.marad.dot.gov/cargopreference](http://www.marad.dot.gov/cargopreference). You may also address questions on cargo preference to the Maritime Administration’s Office of Cargo Preference and Domestic Trade at (202) 366-4610 or via email to [cargo.marad@dot.gov](mailto:cargo.marad@dot.gov).

### **IV. Application and Evaluation Process**

#### **A. Application Components**

The Application is divided into a Part I submission and a Part II submission.

**Part I:** The Part I submission provides DOE with a description of the Project, technical information, background information on management, financing, construction, and operating strategies, and progress to date of critical path schedules. These schedules include items such as obtaining licenses or regulatory permits and approvals, site preparation and long-lead procurements, and are used as a basis for determining the overall eligibility of the Project and the Project’s readiness to proceed. All Part I submissions will be competitively evaluated against all others submitted during the corresponding round of review. DOE will evaluate each Part I submission based upon the factors summarized in Attachment A – Part I. Projects that do not meet the requirements set forth in this Solicitation will not receive any further consideration.

**Part II:** The Part II submission may be filed at any time after DOE invites an Applicant to make a Part II submission. The Part II submission consists of the items summarized in Attachment A – Part II as well as other information that may be requested to facilitate DOE’s continued due diligence review. All Part II submissions will be competitively evaluated against all others submitted during the corresponding round of review. DOE shall have the right, in its sole discretion, to defer consideration of a Part II submission to a later round, if one is available, and to terminate an incomplete Application after the final round. Projects that do not meet the requirements set forth in this Solicitation will not receive any further consideration.

Detailed instructions for the contents of the Parts I and II submissions are set forth in Attachment A.

**B. Loan Guarantee Process Overview**

The following table outlines the Application, approval, and post-selection process for obtaining a loan guarantee under this Solicitation:

<u>Stage</u>	<u>Party Responsible</u>	<u>Costs due from Applicant</u>
Issue Solicitation	DOE	-
Confirm eligibility	Applicant	-
Fulfill Application requirements	Applicant	-
File Part I submission	Applicant	\$10,000 of Application Fee
Review Part I and determine eligibility and Project’s readiness to proceed	DOE	-
Invite qualified Applicants to file Part II submission	DOE	-
File Part II submission	Applicant	Remainder of Application Fee (\$25,000)
Review and evaluate Part II submissions	DOE	-
Invite selected Applicants to continue due diligence	DOE	-
Execute payment agreements with DOE advisors	Applicant/Sponsor	Retainers/deposits under payment agreements
Continue due diligence of selected Applications	DOE	Fees and expenses of third party advisors, billed periodically
Negotiate Term Sheets with selected Applicants	DOE/Applicant	-
Issue Conditional Commitment for loan guarantee	DOE	-
Negotiate transaction documents	DOE/Applicant	Fees and expenses of third party advisors, billed periodically
Fulfill conditions to closing	Applicant	-
Determine Credit Subsidy Cost	DOE	-

Execute Loan Guarantee Agreement	DOE/Applicant	Facility Fee 100 % of first annual Maintenance Fee 100% of Risk-Based Charge for first year Third party closing costs
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### **C. Summary of Application Evaluation Process**

**Part I Review.** DOE will review each Part I submission to determine whether or not such submission is responsive to the requirements of this Solicitation. DOE's Part I evaluation will place particular importance on verifying, preliminarily, that an Application meets the eligibility requirements set forth in II.A, specifically focusing on determinations that --

1. The Lender Applicant and each other Lender identified in the Application is an Eligible Lender, and the Lender Applicant meets the requirements of a Lead Lender;
2. The Borrower is an Eligible Borrower;
3. The Project—
  - a) Is located in the United States;
  - b) Is owned wholly or partly by an Eligible Borrower; and
  - c) Provides a reasonable prospect of repayment of the principal and interest on the Guaranteed Obligation and other Project debt.

Applicants for Projects that, in DOE's Part I evaluation, are deemed eligible and ready to proceed, will then be invited to make a Part II submission. DOE will conduct a more detailed, weighted review of each Part II submission based on the factors referred to in this Solicitation.

**Part II Review.** Section 609.5 of Attachment C sets forth additional programmatic, technical, and financial evaluation of Applications to be considered in the evaluation of an Application under the Solicitation. During the Part II Evaluation Process, DOE will continue to evaluate the Application based on such criteria as well as such other criteria that DOE deems relevant in evaluating the merits of an Application including, without limitation, the following factors:

1. Whether the Project could be fully financed on a long-term basis by commercial banks, institutional investors, or the capital markets without a federal loan guarantee;
2. Whether the Project has identified a dedicated and appropriate Project site. Generally, a Project is restricted to one location within the United States. However, DOE may, in its discretion, consider an Application for a Project that is proposed to be situated in more than one location in the United States if multiple locations are integral components of a unitary plan, necessary to the viability of the Project, and at least one of the locations is identified in the Application;
3. The level of NEPA review required by DOE;

4. Whether the Guaranteed Obligation is expected to be senior-secured debt;
5. The best use of the loan guarantee (i.e., Applications that demonstrate the most efficient and competitive uses of the loan guarantee);
6. The experience of the Borrower and Project Sponsors in the development of similar projects, and the Lender Applicant's experience in lending to similar projects; and
7. The percentage guarantee sought from DOE. The use of partial guarantees below the statutory maximum of 90% and co-lenders will be viewed favorably by DOE.

DOE will make decisions as to whether to continue due diligence on projects competitively evaluated during a given round of Part II reviews after the closing of such round. At any time following the closing of any particular round of Part II submissions, DOE may select, for purposes of continuing due diligence, underwriting, and negotiations, Applications meeting the requirements of the Act, this Solicitation and its other underwriting criteria. Approval of an Application for the purposes of continuing due diligence, underwriting, and negotiations is not an assurance that DOE will offer a Conditional Commitment or a loan guarantee.

The term "due diligence" means the research and analysis that DOE conducts concerning a project for which DOE is considering providing a loan guarantee. During the due diligence process, DOE confirms all material facts regarding the project by, among other things, looking at various aspects relating to the subject project, such as general company data, company financial information, corporate agreements, relevant corporate and project legal documents, intellectual property rights, corporate insurance coverage, corporate litigation history and documents, key personnel and their ability to perform the roles assigned to them, environmental matters, corporate tax filings and documents, marketing information, internal controls, information systems, and operational information. Such research and analysis may include questions (among others) such as who will provide the funds, other than the DOE-guaranteed debt, for the construction of the project; how will the project pay its operating expenses and repay its debt; which parties are responsible for which risks; what experience does your construction contractor and operator have on these types of projects; what permits are required to construct and operate the project and does the project have such permits; and is it possible that there could be cost overruns under the construction contract and, if so, who will pay for those cost overruns. In addition to information requested in this Solicitation, each Applicant may also be required to submit additional information subsequently requested by DOE in order to clarify an Application.

Mandatory criteria that DOE will use during each round of Part II reviews in determining which Project Applications will proceed to the next stage are (1) whether the Project provides a reasonable prospect of repayment of the principal and interest on the Guaranteed Obligation and other Project debt, and (2) whether the Guaranteed Obligation and other Project debt, when combined with amounts available from other sources, will be sufficient to carry out the Project. If these mandatory requirements are not validated in any given round of Part II reviews, or, at DOE's discretion, cannot be validated if required changes to the Project and the financing proposal are made, such Application will not receive further consideration.

DOE shall consider the following factors (the "**Initial Part II Factors**") in determining to make guarantees to Projects under this Solicitation: financial factors, technical factors, and programmatic factors. Additionally, DOE will consider policy factors described below in Section IV.G ("**Policy Factors**") in determining to make guarantees to Projects under this Solicitation. After evaluation of an Application based on the Initial Part II Factors, selected Applications will then be evaluated against each other based on Policy Factors. Only Applications for Projects that are determined to be highly qualified based on Policy Factors will continue with due diligence. An Application for a Project that scores very

highly on the Part II Initial Factors but does not score well on the Policy Factors is highly unlikely to continue with due diligence. Applications for Projects that do not score well on the Initial Part II Factors will not be part of the competition based on the Policy Factors.

The following table summarizes the relative weightings for each Initial Part II Factor:

	Weighting
Financial Factors: Creditworthiness	45%
Technical Factors: Technical relevance, merit, technical approach, work plan, and construction plan	35%
Programmatic Factors: Legal, environmental and regulatory	20%
TOTAL	100.0%

**D. Review of Financial Factors (Weighting: 45%)**

As part of its Part II review process, DOE will conduct a thorough review of all financial factors associated with an Application. Among other considerations, the financial review will:

1. Assess factors affecting the creditworthiness of the Project, including:
  - a) The Project's economic viability with and without the DOE loan guarantee, the availability of other federal and state incentives other than the DOE loan guarantee, its ability to generate sufficient cash flow to service the borrower's debt obligations over the life of the loan guarantee;
  - b) Each Project Sponsor's financial commitment to the Project, financial strength, including its ability to pay transaction costs arising out of the Project (e.g., fees and expenses for DOE's internal technical resources and its independent consultants and outside counsel) on a timely basis, and the credibility of its business and financial plans; and
  - c) Overriding market factors that could significantly influence the success of the Project;
2. Assess the financial viability of the Project, review the sources and uses of funds proposed by the Applicant in the financial plans submitted with the Application, and review updates and projections for future financial performance;
3. Consider the Project Sponsor's prior financial and managerial investment in the Project and its capability to implement the Project as proposed;
4. Consider the extent to which the Project uses partial guarantees and/or co-lenders; and
5. Review all other financial factors DOE deems appropriate.

**E. Review of Technical Factors (Weighting: 35%)**

For its Part II technical review, DOE will evaluate the quality and scope of the Application's technical submission, which shall include the technical elements found in Section 609.5 of the Attachment C, as supplemented below. Among the considerations for DOE's technical review are:

- 1. Technical Relevance and Merit:** DOE will evaluate the extent to which the Project will apply commercially available technology on a national, state, regional, or local basis, including:
  - a) The technical applicability of the proposed technology for near-term commercial application;
  - b) The projection for long-term success and sustainability in operation of the technology proposed.
- 2. Capabilities of the Project Team:** DOE will evaluate the experience and abilities of the Applicant and primary Project participants, including:
  - a) the relevance and depth of prior experience of the Applicant and key Project partners in developing, constructing, and operating projects of similar size, scope and complexity; competencies, strengths and experiences of key partners such as equipment suppliers, engineering, architectural, and design agents or consultants, and vendors providing essential support or services to the Project; and
  - b) whether the Project has obtained access to intellectual property needed to support the Project including key technical components, processes, designs, feedstock, and catalysts through licenses, procurements, or patents.
- 3. Technical Approach/Work Plan:** Projects will be evaluated based on the strength of the Project management plans to be used to achieve the stated cost, schedule, and technical performance objectives and milestones, including:
  - a) scope, maturity, and completeness of pre-construction systems analysis, design detail and prototype testing, including the level and maturity of front end engineering and design;
  - b) relevance, scope, and maturity of the plans for Project execution and performance measurement including integrated Project schedules;
  - c) progress implementing and executing these plans, including achievements attained to date; and
  - d) relevance, scope, and maturity of Project's risk management and mitigation plans;
  - e) the extent to which the technology being proposed has successfully performed in previous applications of a similar nature
- 4. Construction Plan:** DOE will evaluate the strength and completeness of the construction plan for the Project, including:
  - a) progress in the development of the Project construction management approach, whether the approach is through an engineering, procurement, and construction contract, or

other general contracting arrangements; and the quality control measures to be implemented on general contracts to promote overall success of the project through construction

- b) schedule and progress in securing contracts and services for Project execution including the extent to which equipment, commodities, or services costs have been identified, negotiated, and assigned; extent to which such costs are fixed or variable; and adequacy of cost controls; and
- c) when necessary construction rights and federal, state and local permits have been identified, obtained, approved, or scheduled.

**F. Review of Programmatic Factors (Weighting: 20%)**

1. **Legal Review** (Weighting: 10%): As part of the Part II programmatic review, DOE will review the Project's legal structure and risks. This review may involve analysis of legal documents among the parties, including equity owners, entities providing other forms of financing, engineers and construction contractors, operation and maintenance contractors, equipment suppliers, host communities, and any other counterparties of interest. DOE also will analyze the intellectual property rights of all relevant parties in the Project. In addition, DOE will evaluate the Project's capacity to mitigate risk from potential legal and regulatory issues that could jeopardize the success of the Project. Areas of review will include any pending or threatened litigation involving the Project or any Project participant.
2. **Environmental Review** (Weighting: 10%): As part of the Part II programmatic review, DOE will evaluate the Project to determine the appropriate level of environmental review, including the level of NEPA review required. The Applicant must provide enough information to enable DOE to determine the scope of affected environmental aspects (biological, physical, and socio- cultural resources affected) and the level of NEPA review that would be required if the Applicant were selected to begin negotiations with DOE. More information on the NEPA process and examples of environmental data that should be included in each Application may be found in Attachment B.

**G. Review of Policy Factors**

For any Application for a Project that scores highly enough to continue to the competition based on Policy Factors, DOE will evaluate the extent to which such proposed loan guarantee achieves policy objectives by considering the following Policy Factors:

1. Compare the percentage of guaranteed funds to total project costs relied upon by the Application to the percentage of the guaranteed funds to total projects costs relied upon by other Applications, with greater weight being given to Applications that rely upon a smaller percentage of guaranteed funds;
2. Assess the extent to which the Applicant and the Project Sponsor are prepared to proceed to Conditional Commitment and Closing with greater weight being given to Applications for which the Applicant and the Project Sponsor are prepared to proceed more expeditiously than other Applicants and Project Sponsors;
3. Assess the extent to which the Project provides measurable benefits to one or more Eligible Borrowers or its members;



4. Assess the extent to which the Project can be replicated, the benefits for the Borrower and other Eligible Borrowers based on such replication, and the extent to which successful deployment of the Project will accelerate the process of replication; and
5. Assess to what extent the Applicant has a plan to advance or assist in the advancement of the financing of tribal energy development projects in the commercial marketplace.

#### **H. Review and Determination to Proceed**

In reviewing completed Applications, and in prioritizing and selecting Projects for due diligence review, DOE will apply the criteria set forth in this Solicitation. For each round of review, submissions will be considered in a competitive process (*i.e.*, each submission will be evaluated against all other submissions responsive to this Solicitation that are filed during the corresponding round of review).

If DOE reviews a submission and determines not to proceed, DOE will inform the Applicant in writing of the reason(s) for not proceeding. If at any time after DOE invites an Applicant to file a Part II submission, DOE determines not to proceed further with due diligence review or negotiation of a Term Sheet, DOE will inform the Applicant in writing of the reason(s). The discontinuation of due diligence by DOE with respect to any Application will not prejudice the Applicant from applying for a loan guarantee pursuant to the terms of any other open DOE solicitation, including any Title XVII solicitation or from applying for a loan guarantee under this Solicitation for another Project. DOE's decision with respect to any Application not to proceed further with the issuance, due diligence review, or negotiation of a term sheet shall be final and non-appealable.

DOE will consult with the Secretary of the Treasury regarding the reasonableness of the interest rate proposed by the Applicant for the Guaranteed Obligation.

#### **I. Notification**

Selection of Projects for continued due diligence review will be made after the closing of each round of Part II review. If DOE determines that a Project may be suitable for a loan guarantee, DOE will notify the Applicant in writing, will continue its due diligence and, when appropriate, begin negotiating a Term Sheet. There can be no assurance that any Project will be selected for continued due diligence review or offered a Term Sheet.

#### **V. Application Schedule and Instructions**

In order to encourage submissions of complete Applications as early as possible after the date of this Solicitation, Part II submissions will be systematically reviewed on a continuous basis as soon as they are received. However, final selection of qualified Applicants will not occur until after all Part II submissions are competitively evaluated against all others submitted during the corresponding round of review.

##### **A. Application Submission Schedule**

The following are the Part I and Part II Application due dates:

##### **1. Part I Due Dates**

Round 1	9/19/2018
Round 2	11/14/2018
Round 3	1/16/2019

Round 4	3/13/2019
Round 5	5/15/2019
Round 6	7/17/2019
Round 7	9/18/2019
Round 8	11/1/2019

**2. Part II Due Dates**

Round 1	10/17/2018
Round 2	12/19/2018
Round 3	2/13/2019
Round 4	4/17/2019
Round 5	6/19/2019
Round 6	8/14/2019
Round 7	10/16/2019
Round 8	11/30/2019

Additional rounds may be announced in a supplement to this Solicitation.

**B. Electronic Application Submissions**

Applicants must file Part I and Part II submissions in electronic form via the DOE Loan Program Office's online Application portal (the "***Application Portal***"). Supporting documents for Applications will be accepted only in the following: Microsoft Excel files or Adobe "portable document format" ("PDF") files. Applicants should not encrypt, compress, or zip any files. For an Application to be considered under this Solicitation:

Part I must be submitted electronically no later than 11:59 pm Eastern Time, on the due date for the applicable Part I round of review.

To be considered for a particular Part II round of review, Applicants must file their Part II submission no later than 11:59 pm Eastern Time on the corresponding due date for applicable round of Part II submissions.

Application Portal Submission Process:

1. Applicants may access the Application Portal from the Program Website. The information requested in Part I, Section A, should be entered directly into the text fields provided. The information requested in Part I, Sections B through H, and in Part II should be provided by means of PDF or Excel files uploaded through the Application Portal. Uploaded files must indicate clearly the section and subsection of the Part I or Part II requirement to which the information on the files pertain.
2. The Application Portal provides a process for making corrections to an Application if an Application requires substantive changes or additions after it has been submitted and prior to a submission deadline.

3. DOE will determine the time of delivery for Part I or Part II of an Application based on the time stamp for such submission generated by the Application Portal.
4. Prior to the applicable due date and time for the Part I and Part II submissions, it is the responsibility of the Applicant to verify that each submission was successfully transmitted and that DOE has received each such submission. This may be done by printing the confirmation page provided to the Applicant from the Application Portal.

### **C. Registrations**

To apply electronically via the Application Portal, Applicants must complete the following:

1. obtain a Dun and Bradstreet Data Universal Numbering System (“DUNS”) number (plus 4 digit extension, if applicable);
2. obtain a North American Industry Classification System (“NAICS”) code; and
3. register with the System for Award Management (“SAM”).

If the Applicant does not know or does not have a DUNS number, it may search for it or request one at: <http://fedgov.dnb.com/webform/displayHomePage.do>.

If the Applicant does not know or does not have a NAICS code, it may search for it or request one at: <http://www.census.gov/eos/www/naics/>.

If an Applicant is not registered with SAM, it may register at <http://www.sam.gov/portal/public/SAM/>. The SAM registration must be completed and active before a payment can be made.

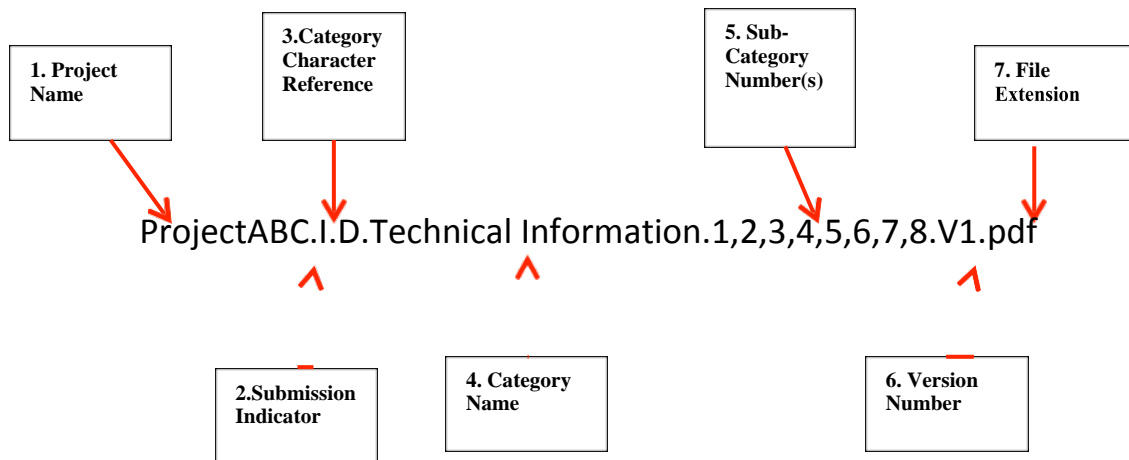
### **D. Formatting Instructions**

Applicants must provide all requested information in the following format:

1. Documents supporting and forming any part of an Application must:
  - a) Be typed in Times New Roman 11 point font;
  - b) Use single-spaced paragraphs;
  - c) Adhere to a format consisting of standard 8.5” x 11” paper; and
  - d) Have 1” margins (top, bottom, left and right) with exceptions for charts, graphics, and similar materials.
2. Applicants should provide a “short name” or other identifier in the file name for each document that will allow for easy identification of the Project.
3. The file naming standard that DOE will use for uploaded files is specified in Table 1. Certain documents uploaded through the Application Portal will be renamed automatically to conform to this convention, as shown in the example that follows in Table 1.

Table 1			
Order #	File Name Identifier	Identifier Specified as	Following separator
1	Project Name	Project Name	Period
2	Part I or Part II Submission Indicator	Roman numeral	Period
3	Category Character Reference	Capital letter identifier for the section in the Solicitation specifying the document category	Period
4	Category name	Name of the section in the Solicitation specifying the document category	Period
5	Sub-category Number(s)	Number identifier for the sub-section in the Solicitation specifying the document sub-category.  If multiple sub-categories apply, list the sub-categories as a comma-separated list in ascending numeric order.	Period
6	Version Number	Capital 'V' followed by the next consecutive version number in the system. The first version of any document is specified as 1.	Period
7	File Extension	File extension representing the file type	NONE

Example:



**E. Multiple Applications**

Applicants may apply more than once under this Solicitation, but a Project Sponsor or Applicant may only submit one Application for a Project.

**F. Required Certification**

The following certification must be included with each Application:

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

The undersigned further certifies that [s]he has full authority to bind the Applicant.

\_\_\_\_\_  
Applicant (Organization Name)

\_\_\_\_\_  
Name of Applicant’s Authorized Officer  
(will fulfill on-line certification)

\_\_\_\_\_  
Signature of Authorized Officer  
(for paper copy only)

\_\_\_\_\_  
Title of Authorized Officer

\_\_\_\_\_  
Date”

**VI. Fees, Costs and Expenses**

**A. Fees**

Certain fees are required as part of a complete Application. These fees defray the administrative costs associated with DOE conducting its internal technical and financial review of the Project. Section IV.B specifies each stage of the loan guarantee process at which Applicants must pay the Administrative Cost of Issuing a Loan Guarantee. Non-refundable fees due to DOE during the course of the Application and loan guarantee process must be paid directly to Treasury and are specified below:

1. **Application Fee:** Applicants must pay a non-refundable application fee (the “*Application Fee*”) in the aggregate amount of Thirty-Five Thousand Dollars (\$35,000) payable as follows:
  - a) Ten Thousand Dollars (\$10,000) must be paid on or prior to the date on which an Applicant submits Part I of its Application. This first payment must be wired to Treasury no later than 11:59 pm Eastern Time on the due date for the Applicant’s desired round of Part I submissions.

- b) Twenty-Five Thousand Dollars (\$25,000) must be paid on or prior to the date on which an Applicant submits Part II of its Application. This second payment must be wired to Treasury no later than 11:59 pm Eastern Time on the due date for the Applicant’s desired round of Part II submission.
2. **Facility Fee:** On the closing date for the Loan Guarantee Agreement, the Applicant must pay a non-refundable facility fee (the “*Facility Fee*”) in an amount equal to Twenty Five basis points (0.25%) of guaranteed portion of the principal amount of the Guaranteed Obligation.
  3. **Maintenance Fee:** Applicants must pay a non-refundable annual maintenance fee (the “*Maintenance Fee*”) to cover DOE’s administrative expenses, other than Extraordinary Expenses, in servicing and monitoring the Loan Guarantee Agreement from the execution of the Loan Guarantee Agreement by the Borrower through payment in full of the Guaranteed Obligation in connection with such Loan Guarantee Agreement. The amount of the Maintenance Fee is expected to vary, depending on the amount of the Guaranteed Obligation, the guaranteed percentage, and the complexity of the Project. The Maintenance Fee shall be paid each year in advance, commencing with payment of a pro-rated annual payment prior to the financial closing date of the Loan Guarantee Agreement, on or prior to the date and in the amount specified in the Loan Guarantee Agreement.
  4. **Risk-Based Charge.** In order to encourage and supplement private lending activity, DOE may collect from the Lead Lender, for deposit in the United States Treasury, a non-refundable periodic Risk-Based Charge (as defined in Attachment C) which, together with the interest rate on the Guaranteed Obligation that DOE determines to be appropriate, will take into account the prevailing rate of interest in the private sector for similar loans and risks. If assessed, the Risk-Based Charge shall be paid at such times and in such manner as may be determined by DOE, but no less frequently than once each year, commencing with payment of a pro-rated payment on the date the Guarantee is issued. The amount of the Risk-Based Charge will be specified in the Loan Guarantee Agreement.

**B. Treasury Wiring Instructions**

Application Fees, Facility Fees, Maintenance Fees, and Risk-Based Charges will only be credited by wire transfers to the following address; provided that such wiring instructions may be updated by DOE from time to time:

<b>Receiving Financial Institution</b>	U.S. Department of Treasury
<b>Address</b>	Federal Reserve Bank of New York 33 Liberty Street New York, NY 10045
<b>Receiver ABA Number</b>	021030004
<b>Receiver ABA short name</b>	TREAS NYC
<b>Business Function Code</b>	CTR (or CTP)
<b>Account (BNF/AC)</b>	89000001
<b>Beneficiary Name</b>	DEPARTMENT OF ENERGY
<b>Originator to Beneficiary Information</b>	Insert Solicitation name, type of fee and applicant name

### **C. Loan Guarantee Credit Subsidy Cost**

The “*Credit Subsidy Cost*” is the net present value of the estimated long-term cost to the U.S. government of a loan guarantee as determined under the applicable provisions of the Federal Credit Reform Act of 1990, as amended (“*FCRA*”). The Credit Subsidy Cost is expressed as a percentage of the Guaranteed Loan amount. DOE makes no representation regarding the amount of any particular Applicant’s Credit Subsidy Cost. No guarantee shall be made unless an appropriation for the cost of the guarantee has been made, the remaining amount of which is sufficient to cover the Credit Subsidy Cost.

Pursuant to the Consolidated Appropriations Act, 2017 (H.R. 244, Pub.L. 115–31) (the “*Appropriations Act*”), Congress appropriated \$8,500,000 (the “*Appropriated Credit Subsidy*”) to cover the Credit Subsidy Costs associated with loan guarantees under TELGP, including, but not limited to, loan guarantees issued under this Solicitation. DOE anticipates that it will allocate the Appropriated Credit Subsidy to cover the Credit Subsidy Costs related to a Guaranteed Loan under the Act, as long as there is remaining unallocated Appropriated Credit Subsidy.

In accordance with FCRA and this Solicitation, DOE must consult with OMB and obtain OMB’s approval of DOE’s calculation of the Credit Subsidy Cost for each proposed loan guarantee prior to issuing any loan guarantee.

### **D. Costs of Independent Consultants and Outside Counsel to DOE**

Each Applicant shall be responsible for paying, or causing the applicable Project Sponsor or Borrower to pay, the fees and expenses incurred by DOE’s independent consultants and outside legal counsel in connection with such Applicant’s Project under all circumstances. Upon making the determination to engage independent consultants or outside counsel with respect to an Application, DOE will continue evaluating and processing an Application only upon a Project Sponsor’s entering into an agreement satisfactory to DOE agreeing to pay the fees and expenses of the applicable independent consultant and/or outside counsel. Applicants are advised that such services shall be rendered for the benefit of DOE in connection with an Applicant’s Project and that DOE, not the Project Sponsor, is the client of such independent consultants and outside counsel. In some cases, a retainer to cover such fees and expenses may be required. In the event that a Project Sponsor fails to comply with the provisions of such payment agreement, DOE may stop work on the Application and/or reject an Application.

DOE recognizes that Applicants under TELGP may also engage outside consultants and that these costs may ultimately be borne by their respective Project Sponsors or Borrowers. To minimize such costs to the extent possible, DOE encourages Applicants to coordinate with DOE with respect to the selection and engagement of outside consultants before DOE’s due diligence process commences.

DOE shall not be financially liable to any independent consultant or outside counsel for services rendered in connection with an Application under any circumstances whatsoever.

### **E. Extraordinary Expenses**

In the event that a Project experiences difficulty relating to technical, financial, or legal matters or other events (e.g., engineering failure or financial workouts) which require DOE to incur time or expenses beyond standard monitoring (“*Extraordinary Expenses*”), DOE will be entitled to payment in full from the Borrower of additional fees in an amount determined by DOE and of related fees and expenses of its independent consultants and outside counsel, to the extent that such fees and expenses are incurred

directly by DOE and to the extent such third parties are not paid directly by the Borrower or Project Sponsor. Loan guarantee agreements with respect to guarantees under the Act shall provide that DOE may charge the Applicant/Borrower additional fees to cover DOE's Extraordinary Expenses in addition to all other fees and expenses mentioned in this Solicitation.

**F. Other Agents' Fees**

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 G, which 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 E 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 to be entered into at closing between the Borrower and the Master Servicer.

**VII. Additional Information**

**A. 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.

**B. Commitment of Public Funds**

DOE shall not be bound by oral representations made during the Application stage or during any negotiations. No binding commitment, agreement, obligation, or right of any kind may be assumed or enforced by any Applicant, Borrower, Project Sponsor or other Project participant against DOE other than in accordance with a duly and validly executed Loan Guarantee Agreement.

**C. Procurement or Financial Assistance Award**

Neither a procurement action under Title 48 of the CFR nor a financial assistance award under 10 CFR Part 600 is contemplated by this Solicitation.

**D. Warning Regarding False Statements**

It is a crime to knowingly make false statements to a federal agency. Misrepresentation or omission of material facts may be the basis for denial of an Application for a loan guarantee from DOE. Penalties upon conviction may include fine and imprisonment. For details, please refer to 18 U.S.C. §1001.

**E. Restrictions on Disclosure and Use of Information**

The information collected pursuant to this Solicitation will aid DOE in its review of Applications for loan guarantees pursuant to the Act. Disclosure of this information may be made as required by law, including the Freedom of Information Act, 5 U.S.C. §552 ("**FOIA**").

Patentable ideas, trade secrets, proprietary and confidential commercial or financial information, disclosure of which may harm the Applicant, should be included in an Application only to the extent that



such information is necessary to convey an understanding of the Project. The use and disclosure of such data may be restricted, to the extent consistent with applicable law, provided the Applicant specifically identifies and marks such data in accordance with 10 CFR 600.15 described below:

1. Upload the following legend on a separate page in response to Section B of Part I and/or Section A of Part II of the Application, respectively (be sure to specify the section number(s) from the Application that contain(s) such data):

“Applicant hereby certifies that Section(s) [\_\_\_] of this Application may contain trade secrets or commercial or financial information that is privileged or confidential and is exempt from public disclosure. Such information shall be used or disclosed only for evaluation purposes or in accordance the loan guarantee agreement, if any, entered in response to this Application. If this Applicant is issued a loan guarantee under Section 2602(c) of the Energy Policy Act of 1992, as amended (25 USC Section 3502(c)), as a result of, or in connection with, the submission of this Application, DOE shall have the right to use or disclose the data contained herein, other than such data that have been properly declared in the loan guarantee agreement to be trade secrets or commercial or financial information that is privileged or confidential and is exempt from public disclosure.”

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 such data):

“Notice of Restriction on Disclosure and Use of Data

Pages [\_\_\_] of this document may contain trade secrets or commercial or financial information that is privileged or confidential and is exempt from public disclosure. Such information shall be used or disclosed only for evaluation purposes or in accordance with a financial assistance or loan agreement between the submitter and the Government. The Government may use or disclose any information that is not appropriately marked or otherwise restricted, regardless of source.”

3. Include the following legend on each page containing trade secrets or commercial or financial information that is privileged or confidential:

“May contain trade secrets or commercial or financial information that is privileged or confidential and exempt from public disclosure.”

4. In addition, each line or paragraph containing trade secrets or commercial or financial information that is privileged or confidential must be marked with brackets or other clear identification, such as highlighting.

#### **F. Burden Disclosure Statement**

This data is being collected to support Applications for loan guarantees from the Department of Energy under the Act. The data you supply will be used for the review of Applications for loan guarantees under the Act.

Public reporting burden for this collection of information is estimated to average 130 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. The OMB Control Number for this collection of information is 1910-5134. The OMB expiration date for this collection of information is November 30, 2019.

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 the Act.

### **G. Questions**

The name and address of the DOE representative whom a potential Applicant or Project Sponsor may contact to receive a copy of this Solicitation is:

Brian Jefferis  
U.S. Department of Energy, Loan Programs Office  
Attn: Tribal Energy Loan Guarantee Program Applications  
1000 Independence Avenue, SW  
Washington, DC 20585

You may send questions to [TELGP@hq.doe.gov](mailto:TELGP@hq.doe.gov). DOE representatives will respond to questions as appropriate. All questions and responses may be made public on LPO's website or elsewhere. Please include "RE: TELGP Solicitation Question -" and a few words describing the question in the subject line. If DOE decides to begin negotiations with an Applicant, DOE will assign a single point of contact for all subsequent questions and/or discussions on matters relevant to the corresponding Application.

### **VIII. References**

Statutes and regulations for which a link is not provided below may be found at the Program Website.

This Solicitation was developed pursuant to the following statutes and regulations:

1. Energy Policy Act of 1992, as amended (25 USC Section 3502(c))
2. Consolidated Appropriations Act, 2017 (H.R. 244, Pub.L. 115-31)
3. Davis-Bacon Act and related acts located at <http://www.dol.gov/whd/govcontracts/dbra.htm>
4. OMB Circulars No. A-11 and A-129, [http://www.whitehouse.gov/omb/circulars\\_a129\\_rev2013](http://www.whitehouse.gov/omb/circulars_a129_rev2013) and the OMB website, [http://www.whitehouse.gov/omb/memoranda\\_default/](http://www.whitehouse.gov/omb/memoranda_default/)
5. Council for Environmental Quality (CEQ) Regulations at 40 CFR 1500-1508 located at: <http://ceq.hss.doe.gov/nepa/regs/ceq/1500.htm#1500.5>

6. CEQ Guidance, “Forty Most Asked Questions Concerning CEQ’s NEPA Regulations,” Question No. 11 (March 23, 1981) located at <http://ceq.hss.doe.gov/nepa/regs/40/11-19.HTM#11>
7. Freedom of Information Act, 5 U.S.C.§552; located at <http://www.foia.gov/index.html>

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## ATTACHMENT A – APPLICATION PARTS I AND II

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The Application is divided into a Part I submission and a Part II submission. Part I of the Application provides DOE with a description of the Project, technical information, expected environmental effects, background information on management, financing strategy, and progress to date of critical path schedules. This information will be used as a basis for determining the overall eligibility of the Project and the Project’s readiness to proceed. DOE will evaluate each Part I submission based upon the factors summarized herein, however, DOE may require that Applicants provide additional certifications or supporting documentation as part of the Project evaluation process. If an Applicant is invited to submit a Part II submission, to the extent that there are any material deviations from the information provided to DOE in the Part I submission, the Applicant must update the information.

The information requested in Part I Section A is to be entered directly into the text fields provided in the Application Portal. The information requested in Part I Sections B through H is to be provided on PDF or Excel documents uploaded through the Application Portal. Uploaded documents must indicate clearly the section and subsection of the Part I requirement to which the information on the documents pertains.

*Note that all references to “Applicant” mean the “Applicant” or “Lender-Applicant” as defined in the Solicitation.*

### **I. Part I Submission**

#### **A. Application Information**

- 1. Project Information:** Enter the Project name, enter the applicable technology category or categories (\_\_\_\_\_), and enter the Project/generation capacity (in Megawatts, Gallons per Year, Tons per Year, or Other).
- 2. Project Location:** Enter the following information regarding one or more Project locations: address, city, state, zip code.
- 3. Project Sponsor(s):** Enter the following information for each Project Sponsor with equity of five percent (5.0%) or more: indicate whether lead sponsor (must have one lead sponsor), entity name, website address, mailing address, city state, postal code, contact first name, contact last name, contact title/position, contact phone, and contact email.
- 4. Applicant Information:** Enter the following information for the Applicant: Entity name, website address, mailing address, city, state, postal code, DUNS number, NAICS code, primary contact information including first name, last name, title/position, phone, and email
- 5. Preliminary Questions:** Answer the following questions. If the answer to any of these questions is “No” include a detailed explanation of the circumstances that cause the answer to be “No” in the space provided.
  - a) Do you confirm you have read and understand the Solicitation (Loan Guarantee Solicitation Announcement from the U.S. Department of Energy Loan Programs Office regarding Federal Loan Guarantees for Tribal Energy Development Projects)?

- b) Is the Applicant legally authorized to enter into loan guarantee transactions and in good standing with the U.S. Department of Energy and/or any other federal agency loan guarantee program?
- c) Is the Applicant current on payment of all amounts owed to the federal government?
- d) Will the Project be built and operated entirely within the United States or its territories?
- e) Do you confirm that to the best of the Applicant's knowledge, after making diligent inquiry, that no Project participant has been charged with or convicted of a misdemeanor or felony (other than routine traffic violations) or been involved in any securities litigation?

**6. Summary of Loan Guarantee Request:** Enter the following information regarding the Applicant's loan guarantee request: requested period of guarantee (years), total Project Costs, proposed guarantee amount, debt, and equity. The sum of the amount entered for debt and the amount entered for equity should equal the amount entered for total Project Costs. The amount entered for the proposed guarantee amount should not be more than 90% of the amount entered for debt. On the basis of the above entered amounts, calculations will be made to determine the following amounts: debt to equity ratio, proposed guarantee amount to debt percentage, and proposed guarantee amount to total Project Costs percentage.

**B. Option to Restrict Disclosure and Use of Certain Data**

Section VII.D of the Solicitation sets forth the steps an Applicant must take in order to restrict the use and disclosure of certain data submitted in the Application. In order to restrict the use and disclosure of certain data submitted in Part I of the Application (to the extent permitted by applicable law) the Applicant must upload a separate page containing the legend set forth in Section VII.D.1 of the Solicitation. If the Applicant does not want to restrict the use and disclosure of any data submitted in the Application the Applicant must upload a separate page containing the following statement: "Applicant does not identify any data the use and disclosure of which is to be restricted."

**C. Organization (Corporate and Personnel)**

- 1. Organizational Chart:** Provide a current corporate organizational chart showing the Applicant's relationship to any subsidiaries, affiliates, parent organizations, or joint ventures associated with the Project. Show the Applicant's relationship to each Principal. For the purpose of this Solicitation, a "Principal" is any legal or natural person who owns or will own five or more percent of the Project.
- 2. Key Staff:** List the full names (including middle name or initial) of key staff to be involved with the Project.
- 3. Evidence of Authority:** Submit evidence that the signatory of the Application has authority to bind the Applicant to the commitments and representations made in the Application and attests as to the accuracy of the information provided in the Application process.

**D. Project Description**

1. **Executive Summary:** Provide a description of the nature and scope of the Project, including the technology, site, environmental resources affected, purpose, size, capacity, design features, key metrics, and key milestones. Describe the commercial feasibility of the technology(ies) and how the Project Sponsor intends to employ such technology(ies) in the Project. Include target dates for:
  - financial close of the Loan Guarantee Agreement;
  - commencement of site preparation and construction;
  - commercial operation; and
  - marketing the output.
2. **Project Eligibility:** Provide a detailed explanation of how and to what extent the Project will qualify as an Eligible Project. DOE will base its determination that the Project is an Eligible Project on the information the Applicant furnishes in its Part I submission. Applicants are encouraged to be thorough in their explanations of a Project's qualification as an Eligible Project, including a discussion of the threshold determinations set forth in Section 609.5(a) of Attachment C, all of the eligibility requirements of the Act and, and all of the eligibility requirements listed in Section II of the Solicitation, "Eligibility Information".
3. **Project Sponsors' and Principals' Capabilities:** Describe Applicant's, Borrower's, each Project Sponsor's and each Principal's capabilities, financial strengths, investment in the venture to date and as anticipated during the construction and operation phases of the venture (i.e., continuing financial support) and proposed equity investment in the Project, as well as the Project's strategic significance to each Project Sponsor and Principal.
4. **Prior Experience:** Summarize the prior experience of each project participant (described in paragraph D.3 above) as it relates to carrying out undertakings similar to the one being proposed. DOE will determine, in its sole and final judgment, whether the experience described shows sufficient expertise.
5. **Project Costs:** Provide the estimated total Project Costs, as defined in Attachment C, and a summary detailing key assumptions and the methodology used to calculate the Project Costs. Include all eligible costs that have been paid and are expected to be paid and that are directly related to the Project. Also include costs for escalation and contingencies in this calculation. Distinguish between eligible and ineligible Project Costs as set forth in Section 609.10 of Attachment C.
6. **Letters of Interest:** Provide a letter of interest for all parties named in Section I.

**E. Technical Information**

Provide a top-level technical Project description, including the design, engineering, construction, and operations and maintenance phases of the Project, including:

1. **Description of Project Design:** A description of the basic processes involved in the Project design.
2. **Description of Technology:** A detailed description of the technology to be used in the Project.

3. **Sketches:** Conceptual level sketches and details outlining general plant layout, process and materials flows, and operating parameters and throughputs for key processes.
4. **Critical Path Agreements Status:** The status of critical path contracts and agreements, such as a Front-end engineering agreement, technology license and teaming agreements, Engineering, Procurement and Construction (“EPC”) contract, long-lead contracts, feedstock agreements, and plant off-take or sales agreements.
5. **Planning Documents:** Key planning documents for the Project such as the construction plan, operation and maintenance plan, waste disposal plan, and preliminary risk management plan.
6. **Acquisition Strategies:** Raw material, equipment, and component supply chain acquisition strategies.
7. [Intentionally Omitted]

**F. Legal and Regulatory Information**

1. **Timelines for Regulatory Approval:** Provide timelines for receipt of all required regulatory approvals.
2. **Status of Required Permits, etc.:** Provide the status of any required federal, state, or local environmental permits, approvals, or reviews.
3. **Pending Investigations:** Provide a summary of any pending or threatened (in writing) action, suit, proceeding, or investigation by a governmental authority, of any kind, including any action or proceeding by or before any governmental authority, that relates to the Project or to the Applicant, any Project Sponsor, any Principal, or the anticipated Borrower, and the status of any appeals.

**G. Business and Financial Plans**

1. **Business Plan:** Provide a description of the following elements of the business plan for the Project:
  - a) Market analysis;
  - b) Feedstock (if applicable);
  - c) Off-take or sales agreements; and
  - d) Estimate of the number of construction jobs and permanent jobs expected to be created or retained in the United States if the Project were to proceed as proposed in the Application.
2. **Financial Plan:** Provide a description of the following elements of the proposed financial plan for the Project:
  - a) The term sheet for the Guaranteed Obligation;
  - b) The amount of expected equity investments (identify participants and level of participation, if applicable);

- c) The preliminary funding plan for the project debt of which the Guaranteed Obligation is a part, including the total amount for (i) working capital financing, (ii) medium-term financing for machinery and equipment and (iii) longer-term financing for the site and facility;
- d) The timing of expected equity contributions and debt funding;
- e) The timing of repayment of expected debt funding;
- f) Whether the Project will benefit directly or indirectly from certain other forms of federal support, such as grants or other loan guarantees from federal agencies or entities, including DOE, federal agencies or entities as a customer or off-taker of the Project's products or services, or other federal contracts, including acquisitions, leases and other arrangements, that support the Project; and
- g) Other non-federal governmental (including state) incentives or other assistance on which the Project relies, including grants, tax credits and other loan guarantees to support the financing, construction and operation of the Project. Indicate whether any such incentives or assistance are subject to clawback and the circumstances under which a clawback could occur.

#### **H. Application Certifications**

- 1. Lobbying, Debarment, and Related Certifications and Assurances:** In submitting an Application for a loan guarantee under the Act, Applicants must provide certain certifications and assurances contained in the form entitled "Certifications for Use with Applications for Department of Energy Loan Guarantees for Tribal Energy Development Projects" which form may be downloaded from the Program Website.
- 2. Applicant Validation Statement:** Provide a written statement that, based on the Project information provided by the Applicant, the Applicant attests that there is a reasonable prospect that the guaranteed portion of the Guaranteed Obligation and any other Project debt will be repaid on time and in full (including interest) from Project cash flow according to the terms proposed in the Application.
- 3. Letter of Commitment:** For an Application to be considered under this Solicitation, Part I must include a letter of commitment signed by an authorized representative of the Applicant in the form set forth on the final page of Attachment A – Part I Submission.
- 4. Penalty of Perjury Statement:** The following certification must be included with each Application:

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

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Applicant (Organization Name)



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

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Signature of Authorized Officer  
(for paper copy only)

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Title of Authorized Officer

---

Date''

[SAMPLE LETTER OF COMMITMENT]

[DATE]

Executive Director  
U.S. Department of Energy, Loan Programs Office  
Attn: Renewable Energy Projects and Efficient Energy Projects Applications 1000 Independence Avenue,  
SW  
Washington, DC 20585

Dear Director:

This letter confirms our intent to seek a loan guarantee pursuant to Solicitation No. 89303018RLP000005, dated July 17, 2018 (the “Solicitation”). We have met all mandatory requirements as specified in the Solicitation including all attachments. Our Part I submission Application Fee was wired as per your instructions set forth in the Solicitation.

We intend to submit our complete Part II submission on or before the due date for the [specify round by number and/or Part II submission due date] round of Part II reviews as set forth in Section IV.A of the Solicitation. Based on the Application process described in the Solicitation, we are prepared to close the financing on or about xx/xx/20\_\_.

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

Sincerely,

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Signature of Authorized Officer

[Name]

## ATTACHMENT A – PART II SUBMISSION

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Subject to the due dates set forth in Section V.A of the Solicitation, the Part II submission may be filed at any time after DOE invites an Applicant to submit its Part II submission. The Part II submission consists of the items summarized herein and in Attachment B as well as other information that may be requested to facilitate DOE’s continued due diligence review. Projects eliminated by any of the requirements set forth in Part II of this Attachment A will not receive any further consideration.

At any time after delivery of a Part II submission, to the extent that there are any material deviations from the information provided to DOE in such Part II submission, the Applicant must notify DOE no later than three (3) business days after becoming aware of any such change by requesting approval from DOE to update their Part II submission via the Application Portal. Applicant must provide DOE with updated information via the Application Portal no later than ten (10) business days after receiving notice from DOE to Applicant of approval to re-open Applicant’s Application.

Responses are to be provided on PDF or Excel documents uploaded through the Application Portal. Uploaded documents must indicate clearly the section and subsection of the Part II requirement to which the information on the documents pertains.

### **I. Part II Submission**

#### **A. Option to Restrict Disclosure and Use of Certain Data**

Section VII.D of the Solicitation sets forth the steps an Applicant must take in order to restrict the use and disclosure of certain data submitted in the Application. In order to restrict the use and disclosure of certain data submitted in Part II of the Application (to the extent permitted by applicable law) the Applicant must upload a separate page containing the legend set forth in Section VII.D.1 of the Solicitation. If the Applicant does not want to restrict the use and disclosure of any data submitted in the Application the Applicant must upload a separate page containing the following statement: “Applicant does not identify any data the use and disclosure of which is to be restricted.”

#### **B. Updates, Changes, and Additions to Part I Submission**

Update the information in the Part I submission to the extent and information in the Part I submission has changed from the information previously submitted. Provide a detailed description of all material amendments, modifications, and additions to the information provided in Part I of the Application, including any changes in the Project’s financing structure or other terms, the rationale for such changes and the expected impact on the Project. Provide any and all updated audited financial statements since the submission of Part I of the Borrower and Project Sponsors (including new parties joining the Project since the Part I submission).

#### **C. Submission Index**

Provide an index of all of the requirements contained in this Solicitation and in Section 609.4 of Attachment C and where in your Application submissions, including Parts I and II, these requirements are addressed.

**D. Project Description**

1. **Detailed Total Cost:** Provide a detailed estimate of Project Costs in accordance with generally accepted accounting principles and practices. Include a breakdown by cost category, year of expenditure and basis for amounts, and include a description of the methodology and key assumptions used to make each estimate. Also include costs for escalation and contingencies, and indicate whether each cost is firm or subject to change. Distinguish between eligible and ineligible Project Costs as set forth in Section 609.10 of Attachment C.
2. **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.
3. **Project Location:** Identify the proposed location in the United States and the rationale for the site location. An Applicant proposing more than one location for a Project must set forth in its Application its justification for siting the Project in more than one domestic location.
4. [Intentionally Omitted]

**E. Technical Information**

1. **Key Contracts and Agreements:** Provide a top-level description, schedule, current status, and drafts or executed copies of all critical path contracts and agreements relevant to the investment, design, engineering, financing, construction, startup, commissioning, shakedown, operation, and maintenance of the Project, including:
  - a) EPC contract(s);
  - b) Long-term contracts for materials, components and equipment to be used in the Project;
  - c) Any leases, operating, or maintenance contracts; and
  - d) Any additional relevant agreements or commitments.
  - e) If drafts or executed copies of any of the foregoing contracts and agreements are unavailable, provide a detailed description of such contracts and agreements, including all key terms and counterparties, and indicate when copies of such contracts and agreements will be available.
2. **Engineering and Construction Plans:** A detailed description of the engineering and design contractor(s), EPC contractor(s), equipment supplier(s), and construction schedules for the Project.
  - a) For each engineering and design contractor, EPC contractor and equipment supplier to be involved in the Project, describe their major activities as linked to specified cost milestones and performance guarantees, as well as performance guarantees, performance bonds, liquidated damages provisions, and equipment warranties to be provided.
  - b) Describe the following:

- (i) The extent to which all required contractors are engaged; and
  - (ii) The extent to which pre-construction design has been completed.
- c) Describe each contractor or supplier's experience and qualifications as related to the Project.
- 3. Key Site Components:** Describe the key site components of the Project and risks associated with their availability (e.g., water, electricity, gas, or other utilities). Describe site access (roads, highway, and rail) including rights-of-way, easements, and logistical considerations.
- 4. Operation Costs:** Provide an estimate of operation costs on an annual basis.
- 5. Project Plan:** Provide a comprehensive Project plan that will guide design, engineering, and construction of the Project, including a description of:
- a) Prior successful implementation of similar project plans for projects of this scale by the Borrower or any Project Sponsor (Applicants that are not able to include examples of successful implementation of similar project plans for projects of this scale should provide a detailed description of the facts that they believe are sufficient to demonstrate to DOE that the Project participants have the expertise that would be evidenced in examples of successful implementation of similar project plans for projects of this scale. DOE will determine, in its sole and final judgment, whether the experience described shows sufficient expertise);
  - b) Each step of the proposed process;
  - c) Fully sourced or cited material and energy balance, including system simulation for processes, using industry standard software;
  - d) The process for selecting an EPC firm, if applicable, or the internal resources used to serve this function;
  - e) Equipment requirements;
  - f) Rights or licenses to use processes proposed;
  - g) An integrated schedule or Project work plan that encompasses time periods for design, procurement (including long-lead procurements), construction (including mobilization, testing and start-up), and commissioning. The Project work plan shall identify any Project dependencies such as the timing of land-use agreements, environmental permits, or licenses, or physical improvements such as utility tie-ins.
  - h) Minimum design specifications in which process flow diagrams are coupled to preliminary cost estimates.
  - i) Project management tools, including Gantt charts, resource-based scheduling or other methods to assess and track progress;
  - j) Staffing plans, including identification of costs and resources to design, engineer, construct, and operate the Project;

- k) Project risks and mitigation strategies, including risk related to scale-up, construction, performance, etc. and the potential Project impact and mitigation of such risks; and
  - l) Contingency plans to address cost overruns and schedule slippage.
6. Operating and Maintenance Plans: Provide the following:
- a) The plant operating plan, proposed providers, expected staffing requirements, anticipated parts inventory, major maintenance schedules, estimated annual downtime and any performance guarantees and related liquidated damages provisions;
  - b) A description of the plans for commissioning and initial operations, taking into account the construction schedule, the establishment of material supply chains, the hiring, and training of management and operating personnel, logistics, potential bottlenecks, and delays, financing for contingencies and working capital;
  - c) A description of any plans for expanding capacity over initial operations and the Borrower's or Project Sponsors' experience with comparable ramp-ups; and
  - d) A description of the operations and maintenance plans for the Project, including acquisition of critical spares, inventory sources, operations and maintenance procedures, and associated risks.
7. **Engineer's Report:** Provide an independent engineer's report that includes a review, evaluation, analysis, and recommendations in the following areas:
- a) base technology,
  - b) Project feasibility;
  - c) engineering and design approach;
  - d) integrated Project schedule, including the schedule for completion;
  - e) cost estimates and technical input to the financial model;
  - f) contractual requirements and arrangements;
  - g) proposed supply chain;
  - h) Project risks, including mitigation activities and milestones;
  - i) direct labor requirements during construction and operation;
  - j) siting and permitting;
  - k) testing and commissioning;
  - l) operation and maintenance; and
  - m) decommissioning plan and costs.

8. **Decommissioning Plan:** Provide a detailed description of the Project decommissioning, deconstruction, and disposal plans (including any hazardous waste disposal plans), including anticipated costs and arrangements that have been made to ensure that funding will be available as necessary.

**F. Legal and Regulatory Information**

1. **Legal Opinions/Material Reports:** Provide a copy of all applicable legal opinions, and other material reports, analyses and reviews concerning the Project.
2. **Permits and Approvals:** Provide a complete list of federal, state, and local permits, licenses, and approvals required to site, construct, implement, and operate the Project, including environmental authorizations or reviews necessary to commence construction. For permits and approvals already received, provide the filing and approval dates and parties involved. For all remaining required permits and approvals, provide documentation validating the filing date and the expected date(s) for obtaining them and describe all additional actions required to obtain such permits and approvals. Explain whether governmental entities (other than DOE) are required to approve the activities of the Applicant contemplated by this Solicitation or described in the Application.
3. **Background and Legal Structure:**
  - a) Describe the organizational history, ownership chain, and legal structure (e.g., corporation, partnership, or LLC) of the Borrower and each Project Sponsor.
  - b) Include copies of the statutory authorities under which the Borrower and each Project Sponsor were created and copies of the good standing certificates for each such entity.
  - c) Provide a current organizational chart showing the Borrower's relationship to each Project Sponsor, the venture and to any subsidiaries or affiliates. Advise if there are any proposed changes to the current organizational structure of the Applicant.
  - d) Describe whether the Project will be owned by a subsidiary of the Borrower or directly by the Borrower.
4. **Legal Authority:** Describe the legal authority of the Borrower to carry out the Project activities. Provide supporting documentation.
5. **Litigation and/or Conflicts:** Disclose any current, threatened (in writing), or pending litigation involving the Borrower, a Principal, or, to the Applicant's knowledge, any other relevant party, related to permitting, public involvement, environmental issues, construction defects, fraud, securities fraud, conflict of interest, failure to perform under a local, state or federal contract, or other charges which may reflect on the Applicant's, Principal's, or any Project Sponsor's reputation, financial position or ability to complete the Project.
6. **Potential Environmental Impacts:** Submit a report containing the status of all state and local environmental reviews and an analysis of the potential environmental impacts and risks of the Project in sufficient detail to enable DOE to assess the significance of the environmental impacts and risks and to determine the level of environmental review that will be required. See Attachment B for guidance regarding required environmental information for the NEPA review process.

## **G. Business Plan**

Provide a business plan that demonstrates the Applicant's expertise, financial strength, and management capability to undertake and operate the Project as proposed.

- 1. Output:** Provide a detailed description of the Project's output.
- 2. Applicant's Capability:** Describe in detail the capabilities and experience of the Applicant and each Project Sponsor, Principal, contractor, and every other counterparty that the Applicant believes will enable the Project to be successful.
- 3. Market Analysis:**
  - a) Include an analysis of the current and projected market for the Project's output. Discuss the prevailing economic and demographic trends in the target market, both on a macroeconomic basis and for the Project's output. Identify the market's dependency on tax benefits or other government policy. Provide a justification for revenue projections (price and volume) and costs. Describe the Project's projected customer base and suppliers.
  - b) Describe the Applicant's current and potential competitors for the Project's output.
  - c) Provide a detailed description of any competitive advantages.
- 4. Operating and Market-Related Risks and Mitigation Strategies:** Provide a detailed analysis of the operating and market-related risks associated with the Project (e.g., market factors, price volatility, etc.) and mitigation strategies to be employed (e.g., sales contracts and reserves).
- 5. Management Plan:**
  - a) Provide a staffing chart indicating the individuals (including position and qualifications) proposed to operate the Project. Provide 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; and
  - b) Describe the role of management in the operation of the Applicant's other businesses, if any.
- 6. Supply and Sales Arrangements:**
  - a) Provide a detailed analysis of the market for the Project's feedstock and output;
  - b) Provide a detailed description of the Project's plans for ensuring an adequate supply of materials, equipment, and components as needed for successful operation. Provide drafts or executed copies of all material supply contracts for the Project;
  - c) Provide the Project's forecast for sales capacity and feedstock (availability and costs);
  - d) Provide drafts or executed copies of all feedstock agreements and sales contracts or other revenue-generating agreements that will provide revenue for the Project. Provide



an analysis of the creditworthiness of counterparties who are party to such agreements;  
and

- e) Provide copies and detailed summaries of all other material sales and revenue contracts.
- 7. **Insurance Coverage:** Provide a detailed description of the proposed insurance coverage for the Project, together with a report from an insurance consultant that addresses the appropriateness and adequacy of such coverage.
- 8. **Growth Plan:** Describe any proposals for expanding the business enterprise beyond the Project.
- 9. **Jobs Created/Retained:** Provide a brief description of the number and types of jobs expected to be created or retained in the United States if the Project were to proceed as proposed in the Application. The types of jobs may be expressed using job titles, broad labor categories, or the Applicant's existing practice for describing jobs provided that the descriptions so provided are commercially identifiable. The number of jobs shall be expressed as full-time equivalent, calculated cumulatively as all hours worked divided by the total number of hours in a full-time schedule, as defined by the Applicant. Applicants should include in their narrative the information used to calculate the full-time equivalent figure.

#### **H. Financial Plan**

- 1. **Financial Statements:** Provide unaudited financial statements for the Borrower for the past three years (or since inception of the Borrower has not been in existence for at least three years), prepared in accordance with generally accepted accounting principles in the United States ("*U.S. GAAP*"). Include all associated notes and describe business and financial interests of controlling or commonly controlled organization or persons, including parent companies, subsidiaries, and other affiliated entities or partners of the Borrower or Project Sponsors.
- 2. **Project Financial Model and Analysis:**
  - a) Include a working financial model (with formulas) with pro-forma financial statements for the Project. List the major assumptions in a separate worksheet within the model.
    - (i) Include assumptions and calculations for the proposed tenor of the Guaranteed Obligation, plus two (2) years.
    - (ii) Include detailed income statements, balance sheets, cash flow statements, and waterfall statements.
    - (iii) Include financial ratios (e.g., interest coverage ratios, fixed charge coverage ratios, debt- to-capital ratios, asset coverage ratios, and working capital ratios (including high and low points)) and other relevant terms in the proposed term sheet. Highlight those periods during construction and operation in which non-compliance with the proposed financial ratios is most likely.
    - (iv) Include sensitivity analyses that demonstrate the Project's performance under appropriate stress scenarios, including low sales prices, reduced Project

performance, loss of major customers, high input material prices, and the impact of future competing technologies.

(v) Include cost assumptions based on compliance with the Davis-Bacon Act.

(vi) Include a complete description of the operational and financial assumptions and methodologies incorporated in the financial model.

b) The financial analysis should demonstrate that 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 incurred. Discuss the principal factors that could impair the Borrower's ability to meet its debt service obligations, including the Guaranteed Obligation.

**3. Detailed Financial Plan:** Provide a detailed financial plan for the Project, prepared in accordance with U.S. GAAP.

a) List all proposed sources of expected equity and debt funding by provider, type, and aggregate amount, and provide a copy of the financial closing checklists for each financing, if available.

b) Describe uses, timing, and amount of expected equity and debt funding.

c) For each party associated with the Project, provide a detailed description of their projected liabilities over the term of the Loan Guarantee Agreement.

d) Include a summary of 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).

e) Include a summary of any funding that will be tax-advantaged debt to which Section 149(b) of the Internal Revenue Code may be applicable. Summarize measures that will be taken to avoid (i) effective subordination of federally guaranteed debt to tax-advantaged debt, (ii) the use of any federal guarantee as collateral to secure tax-advantaged debt, and (iii) any linkage of federally guaranteed debt with tax-advantaged debt.

f) Include a schedule indicating all anticipated short term financing or credit facilities required for on-going operations of the Project, including all working capital facilities, performance bonds and similar forms of financing available to or anticipated to be available to the Project. Describe the nature of the security or collateral that is intended to be made available to secure these working capital and other short term facilities.

**4. Proposed Term Sheet:** Include a proposed term sheet for the Guaranteed Obligation.

**5. Credit History:** Provide the credit history of the Borrower and any business entity owning or controlling a five percent (5%) or greater interest in the Project or the Borrower, the offtaker(s), the feedstock supplier, if applicable, and the EPC contractor. Provide the full name of the entity, address, and date of organization.

6. **Collateral:** Provide a listing, 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, including any intellectual property necessary for the operation of the Project. Valuations must be supported by independent, third-party appraisals for existing assets and commercial 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. The appraisal should include information on the useful life of all physical assets expected to serve as collateral, including a depreciation schedule (prepared in accordance with U.S. GAAP).
7. **Consideration of *Pari Passu* Status:** Provide information and financing documents regarding any existing senior secured debt of any party providing a guarantee or other credit support.
8. **Preliminary Credit Assessment:** Provide the Applicant's preliminary credit assessment for the Project.
  - a) If the Project will be financed using a corporate financing structure or will benefit from any third-party guarantees, provide a detailed public or private credit assessment of the Borrower and Project Sponsor or such third-party guarantor. Such assessment should take into account the impact of the proposed transaction on the Borrower and Project Sponsor or such third-party guarantor's credit rating and evaluate the Project Sponsor or third-party guarantor's financial viability in the absence of a DOE loan guarantee or any other credit support.
  - b) If the Project will be financed using a project financing structure, provide a detailed public or private credit assessment of the Project. Such assessment should evaluate the Project in the absence of a DOE loan guarantee or any other credit support.
9. **Other Financial Information:** Include any other information about the Borrower and any Project Sponsor that provides a comprehensive summary of the Borrower or Project Sponsor's business and financial situation, including specific information relevant to analyzing historical cash flow on a secular, normalized basis.

#### **I. Certifications**

1. Lobbying, Debarment, and Related Certifications and Assurances. Applicants must provide certain certifications and assurances contained in the form entitled "Certifications for Use with Applications for Department of Energy Loan Guarantees for Tribal Energy Development Projects" which form may be downloaded from the Program Website
2. **Applicant Validation Statement:** Provide a written statement and supporting analysis attesting that, based on the information provided to DOE, there is a reasonable prospect that all debt of the Project (including the Guaranteed Obligation) will be repaid on time and in full (including interest) from cash flow generated by the Project and in accordance with the terms proposed in the Application.

As part of the Project evaluation process, DOE may require that Applicants provide additional certifications or supporting documentation. DOE is not authorized to issue a loan guarantee for the benefit of any party that is delinquent on federal debt, including federal

tax debt.

**3. Penalty of Perjury Statement:** The following certification must be included with each Application:

“The undersigned certifies that the data and information submitted and the representations made in this Application and any attachments to this Application are true and correct, to the best of the Applicant’s knowledge and belief after due diligence, and the Applicant has not omitted any material facts. The undersigned further certifies that [s]he has full authority to bind the Applicant.”<sup>3</sup>

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Applicant (Organization Name)

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Name of Applicant’s Authorized Officer  
(will fulfill on-line certification)

---

Signature of Authorized Officer  
(for paper copy only)

---

Title of Authorized Officer

---

Date”

ATTACHMENT B –NEPA Guidance

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**I. Information to be submitted to DOE in an Application**

Under Section III.B of this Solicitation, an Application must include a report containing an analysis of the potential environmental impacts of the Project that will assist DOE in assessing whether the Project will comply with all applicable environmental requirements and will enable DOE to complete any necessary reviews under NEPA. Accordingly, each Applicant should submit the following information to assist DOE in determining the appropriate level of NEPA review, and in preparing an EA or EIS if necessary:

**A. Description of Project Facilities, Site, and Surrounding Location. Describe and, as appropriate, identify and quantify:**

1. Purpose of the Project facility and materials produced, including how they would be transported;
2. Present an overall schematic process diagram that identifies all inputs and outputs;
3. New facilities to be constructed, existing facilities to be modified, and materials and equipment to be used in construction;
4. 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);
5. Extent of necessary site clearing and excavation;
6. Associated construction of transport infrastructure (e.g., access roads, railroad links, docks, pipelines, and electrical transmission facilities) or waste treatment facilities;
7. Expected Project lifetime, including expansion of initial Project at the proposed site and to other sites;
8. Project site and location, including a map;
9. Whether a Phase 1 Environmental Site Assessment (or other measure performed to meet the INNOCENT LANDOWNERS – STANDARDS FOR CONDUCTING ALL APPROPRIATE INQUIRES rule at 40 CFR Part 312) has been completed, if so, summarize results;
10. Ownership of or jurisdiction over the land by tribal, federal, state, regional, or local agency;
11. Existing transportation corridors and infrastructure (e.g., electricity, natural gas, water, and wastewater);
12. Nearby land use and features (e.g., residences, industrial facilities, and recreational areas);
13. Areas with special designation both on the Project location and nearby, including national forests, historic or culturally significant sites, wetlands, floodplains, critical habitat for

designated threatened or endangered species or the presence of those species, prime and unique farmland; and

14. Near-by human populations (including minority and low-income).

**B. Resource Consumption Rates and Effluent Emissions Streams and Impacts.**

1. For both construction and operation, describe and, as appropriate, identify and quantify:
  - a) Material resources to be used, including how they would be transported;
  - b) Source(s) and rates of water consumption and adequacy of water supply sources;
  - c) Onsite and offsite releases (air emissions, including carbon dioxide, odors; water effluents and other liquid waste streams; solid and hazardous waste), including rate and duration of such substances as criteria pollutants, wastewater, and hazardous substances;
  - d) Onsite and offsite waste treatment and disposal; and
  - e) Number of on-site workers.
2. Identify a spectrum of scenarios that could result from process upsets or accidents.
3. Expected impacts to physical, biological, cultural, and socioeconomic resources from facility construction and operation.

**C. Status of other environmental and regulatory reviews. Such status reports should include, but not be limited to:**

1. If the 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
2. If an environmental impact review (e.g., NEPA documentation or agency consultations) has been prepared (or is in the process of being prepared or is anticipated) for the Project (by another federal agency or a state agency), provide a summary or copy of the review.

**D. Alternative sites or operating parameters. Please identify:**

1. Any other sites considered for the Project, and state whether they remain options or give the reasons for not proposing them; and
2. Any alternative operating parameters for the Project (e.g. materials or processes to be used) and state whether they remain options or give the reasons why options are not available.

ATTACHMENT C – Applicable Provisions of Title XVII Rule

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**§ 609.2 Definitions and interpretation.**

(a) Definitions. When used in this part the following words have the following meanings.

Act means Section 2602(c) of the Energy Policy Act of 1992, as amended (25 USC Section 3502(c)).

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 negotiation and offer of a Term Sheet;
- (3) The negotiation of a Loan Guarantee Agreement and related documents, including the issuance of a Guarantee; and
- (4) 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 a Person [...] that submits and Application to DOE. [*The terms “Applicant” and “Lender Applicant” are used interchangeably in this Solicitation*].

Application means a written submission of materials responsive the requirements of this Solicitation including Section 609.4 of this Attachment.

Application Fee means the fee or fees required to be paid by an Applicant in connection with submission of an Application and specified in a Solicitation. The Application Fee does not include the Credit Subsidy Cost.

Attorney General means the Attorney General of the United States.

Borrower means any Person that is a borrower under a Loan Agreement.

Cargo Preference Act means the Cargo Preference Act of 1954, 46 U.S.C 55305, as amended.

Commercial Technology. [*Intentionally omitted*]

Conditional Commitment means a Term Sheet offered by DOE and accepted by the offeree of the Term Sheet, all in accordance with § 609.6(c); 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 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, 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:

Davis-Bacon Act means subchapter IV of chapter 31 of title 40, United States Code.

DOE means the United States Department of Energy.

Eligible Lender means

- (1) Any Person formed for the purpose of, or engaged in the business of, lending money that, as determined by DOE in each case, is:
  - (i) Not debarred or suspended from participation in a Federal government contract 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);
  - (ii) Not delinquent on any Federal debt or loan;
  - (iii) Legally authorized and empowered to enter into loan guarantee transactions authorized by the Act and these regulations;
  - (iv) Able to demonstrate experience in originating and servicing loans for commercial projects similar in size and scope to the Eligible Project, or able to procure such experience through contracts acceptable to DOE; and
  - (v) Able to demonstrate experience as the lead lender or underwriter by presenting evidence of its participation in large commercial projects or energy-related projects or other relevant experience, or able to procure such experience through contracts acceptable to DOE; or
- (2) [Intentionally omitted]

Eligible Project has the meaning set forth in Section II.B of the Solicitation.

Equity means cash contributed to the permanent capital stock (or equivalent) of the Borrower or the Eligible Project by the shareholders or other owners of the Borrower or the Eligible Project. Equity does not include proceeds from the non-guaranteed portion of a Guaranteed Obligation, proceeds from any other non-guaranteed loan or obligation, or the value of any government assistance or support.

Facility Fee means the fee, to be paid in the amount and in the manner provided in the Term Sheet, to cover the Administrative Cost of Issuing a Loan Guarantee for the period from the Applicant’s acceptance of the Term Sheet through issuance of the Guarantee.

Federal Financing Bank [Intentionally omitted]

Guarantee means the undertaking of the United States of America, acting through the Secretary pursuant



to the Act, to pay in accordance with the terms thereof, principal and interest of a Guaranteed Obligation.

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

Holder means any Person that holds a promissory note made by the Borrower evidencing the Guaranteed Obligation (or his designee or agent).

Intercreditor Agreement means any agreement or instrument (or amendment or modification thereof) among DOE and one or more other Persons providing financing or other credit arrangements to the Borrower or an Eligible Project) or that otherwise provides for rights of DOE in respect of a Borrower or in respect of an Eligible Project, in each case in form and substance satisfactory to DOE.

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

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

New or Significantly Improved Technology [Intentionally omitted]

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

Person means any natural person or any legally constituted entity, including a state or local government, tribe, corporation, company, voluntary association, partnership, limited liability company, joint venture, and trust.

Project Costs mean those costs, including escalation and contingencies, that are to be expended or accrued by a 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 § 609.10(a). Project Costs do not include costs for the items set forth in § 609.10(b).

Project Sponsor means any Person that assumes substantial responsibility for the development, financing, and structuring of an Eligible Project and 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 Borrower.

Risk-Based Charge means a charge that, together with the principal and interest on the guaranteed loan, or at such other times as DOE may determine, is payable on specified dates during the term of a Guaranteed Obligation.

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

Solicitation means this Solicitation, as the same may be modified or supplemented from time to time.

Term Sheet means a written offer for the issuance of a loan guarantee, executed by the Secretary (or a DOE official authorized by the Secretary to execute such offer), delivered to the offeree, that sets forth the detailed terms and conditions under which DOE and the Applicant will execute a Loan Guarantee Agreement.

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

(b) Interpretations. This part shall be interpreted using the following guidelines.

- (1) The word “discretion” when used with reference to DOE, including the Secretary, means “sole discretion.”
- (2) Defined terms in the singular shall include the plural and vice versa, and the masculine, feminine or neuter gender shall include all genders.
- (3) The word “or” is not exclusive.
- (4) References to laws by name or popular name are references to the version of such law appearing in the United States Code and include any amendment, supplement or modification of such law, and all regulations, rulings, and other laws promulgated thereunder.
- (5) References to information or documents required or allowed to be submitted to DOE mean information or documents that are marked as provided in 10 CFR 600.15(b). A document or information that is not marked as provided in 10 CFR 600.15(b) will not be considered as having been submitted to or received by DOE.
- (6) A reference to a Person includes such Person’s successors and permitted assigns.
- (7) The words “include,” “includes” and “including” are not limiting and mean include, includes and including “without limitation” and “without limitation by specification.”
- (8) The words “hereof,” “herein” and “hereunder” and words of similar import refer this part as a whole and not to any particular provision of this part.

### **§ 609.3 Solicitations.**

- (a) [Intentionally omitted]
- (b) [Intentionally omitted]
- (c) Using procedures as may be announced by DOE a potential Applicant or Borrower may request a meeting with DOE to discuss a potential Application. At its discretion, DOE may meet with a potential Applicant or Borrower, either in person or electronically, to discuss a potential Application. DOE may provide a potential Applicant or Borrower with a preliminary response regarding whether its proposed project may constitute an Eligible Project. DOE’s responses to questions from potential Applicants and Borrowers and DOE’s statements to potential Applicants and Borrowers are pre-decisional and preliminary in nature. Any such responses and statements are subject in their entirety to any final action by DOE with respect to an Application submitted in

accordance with § 609.4.

**§ 609.4 Submission of applications.**

- (a) [Intentionally omitted]
- (b) [Intentionally omitted]
- (c) An Application must include, at a minimum, the following information and materials:
  - (1) A completed Application form signed by an individual with full authority to bind the Applicant, including the commitments and representations made in each part of the Application;
  - (2) The applicable Application Fee;
  - (3) [Intentionally omitted];
  - (4) A description of the nature and scope of the proposed project, including:
    - (i) Key project milestones;
    - (ii) Location or locations of the proposed project;
    - (iii) Identification and commercial feasibility of the technology to be deployed;
  - (5) An explanation of how the proposed project qualifies as an Eligible Project;
  - (6) A detailed estimate of the total Project Costs together with a description of the methodology and assumptions used;
  - (7) A detailed description of the engineering and design contractor(s), construction contractor(s), and equipment supplier(s);
  - (8) The construction schedules for the proposed project, including major activity and cost milestones;
  - (9) A description of the material terms and conditions of the development and construction contracts to include the performance guarantees, performance bonds, liquidated damages provisions, and equipment warranties;
  - (10) 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;
  - (11) A description of the management plan of operations to be employed in carrying out the proposed project, and information concerning the management experience of each officer or key person associated with the proposed project;

- (12) A detailed description of the proposed project decommissioning, deconstruction, and disposal plan, and the anticipated costs associated therewith;
- (13) An analysis of the market for any product (including but not limited to electricity and chemicals) to be produced by, or services to be provided by, the proposed project, including relevant economics justifying the analysis, and copies of
  - (i) Any contracts for the sale of such products or the provision of such services, or
  - (ii) Any other assurance of the revenues to be generated from sale of such products or provision of such services;
- (14) 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 proposed project over the term of the Loan Guarantee Agreement;
- (15) 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 proposed project;
- (16) A copy of the financial closing checklist for the equity and debt to the extent available;
- (17) The business plan on which the proposed project is based and the financial model with respect to the proposed project for the proposed term of the Guaranteed Obligations, including, as applicable, pro forma 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;
- (18) Financial statements for the three immediately preceding fiscal years of the Borrower (or such shorter period as the Borrower has been in existence) that have been audited by an independent certified public accounting firm, including all associated certifications, notes and letters to management, as well as interim financial statements and notes for the current fiscal year for the Borrower and all other Persons the credit of which is material to the success of the transactions described in the Application;
- (19) A copy of all legal opinions, and other material reports, analyses, and reviews related to the proposed project that have been delivered prior to submission of any part of the Application;
- (20) An independent engineering report prepared by an engineer with experience in the industry and familiarity with similar projects. The report should address the proposed project's siting and permitting arrangements, engineering and design, contractual requirements, environmental compliance, testing, commissioning and operations, and maintenance;
- (21) A credit history of the Borrower and each Project Sponsor;
- (22) The Applicant's credit assessment for the proposed project, without a loan guarantee;
- (23) A list showing the status of and estimated completion date of required applications for federal, state, and local permits, authorizations or approvals to site, construct, and operate the

- proposed project;
- (24) A report containing an analysis of the potential environmental impacts of the proposed project that will enable DOE to—
- (i) Assess whether the proposed project will comply with all applicable environmental requirements; and
  - (ii) Undertake and complete any necessary reviews under the National Environmental Policy Act of 1969;
- (25) A listing and description of the assets of or to be utilized for the benefit of the proposed project, and of any other asset that will serve as collateral pledged in respect of the Guaranteed Obligations, including appropriate data as to the value of such assets and the useful life of any physical assets. With respect to real property assets listed, an appraisal that is consistent with the “Uniform Standards of Professional Appraisal Practice,” promulgated by the Appraisal Standards Board of the Appraisal Foundation, and performed by licensed or certified appraisers, is required;
- (26) An analysis demonstrating that, at the time of the Application, there is a reasonable prospect that Borrower will be able to repay the Guaranteed Obligations (including interest) according to their terms, and a complete description of the operational and financial assumptions and methodologies on which this demonstration is based; and
- (27) If proposed project assets or facilities are or will be jointly owned by the Borrower and one or more other Persons, each of which owns an undivided ownership interest in such proposed project assets or facilities, a description of the Borrower’s rights and obligations in respect of its undivided ownership interest in such proposed project assets or facilities.
- (d) During the Application evaluation process pursuant to § 609.5, DOE may request additional information, potentially including a preliminary credit rating or credit assessment from a credit rating agency, with respect to the proposed project.
- (e) DOE will not consider any part of any Application or the Application as a whole complete unless the Application Fee (or the required portion of the Application Fee related to a particular part of the Application) has been paid. An Application Fee paid in connection with one Application is not transferable to another Application. Except in the discretion of DOE, no portion of the Application Fee is refundable;
- (f) DOE has no obligation to evaluate an Application that is not complete, and may proceed with such evaluation, or a partial evaluation, only in its discretion.
- (g) Unless an Applicant requests an extension and such an extension is granted by DOE in its discretion, an Application may be rejected if it is not complete within four years from the date of submission (or date of submission of the first part thereof, in the case of Applications made in more than one part).
- (h) Upon making a determination to engage independent consultants or outside counsel with respect to an Application, DOE will proceed to evaluate and process such Application only following execution by the Applicant or Project Sponsor, as appropriate, of an agreement satisfactory to DOE

to pay the fees and expenses charged by the independent consultants and outside legal counsel.

**§ 609.5 Programmatic, technical and financial evaluation of applications.**

- (a) In reviewing completed Applications, and in prioritizing and selecting those as to which a Term Sheet should be offered, DOE will apply the criteria set forth in the Act, the Solicitation, and this Attachment C. Applications will be considered in a competitive process, i.e. each Application will be evaluated against other Applications responsive to the Solicitation. Applications will be denied if:
- (1) The proposed project is not an Eligible Project;
  - (2) [Intentionally omitted]
  - (3) The Person proposed to issue the loan or purchase other debt obligations constituting the Guaranteed Obligations is not an Eligible Lender;
  - (4) [Intentionally omitted]
  - (5) Significant Equity for the proposed project will not be provided by the date of issuance of the Guaranteed Obligations, or such later time as DOE in its discretion may determine; or
  - (6) The proposed project does not present a reasonable prospect of repayment of the Guaranteed Obligations.
- (b) If an Application has not been denied pursuant to § 609.5(a), DOE will evaluate the proposed Project based on the criteria set forth in the Act, the Solicitation and the following:
- (1) [Intentionally omitted]
  - (2) [Intentionally omitted]
  - (3) [Intentionally omitted]
  - (4) The extent to which the level of proposed support in the Application is consistent with a reasonable prospect of repayment of the Guaranteed Obligations by considering, among other factors:
    - (i) The extent to which the requested amount of the loan guarantee, the requested amount of Guaranteed Obligations and, if applicable, the expected amount of any other financing or credit arrangements, are reasonable relative to the nature and scope of the proposed project;
    - (ii) The total amount and nature of the Project Costs and the extent to which Project Costs are to be funded by Guaranteed Obligations; and
    - (iii) The feasibility of the proposed project and likelihood that it will produce sufficient revenues to service its debt obligations over the life of the loan guarantee and assure timely repayment of Guaranteed Obligations;

- (5) The likelihood that the proposed project will be ready for full commercial operations in the time frame stated in the Application;
  - (6) The amount of Equity committed and to be committed to the proposed project by the Borrower, the Project Sponsor, and other Persons;
  - (7) Whether there is sufficient evidence that the Borrower will diligently implement the proposed project, including initiating and completing the proposed project in a timely manner;
  - (8) Whether and to what extent the Borrower will rely upon other Federal and non-Federal Government assistance such as grants, tax credits, or other loan guarantees to support the financing, construction, and operation of the proposed project and how such assistance will impact the proposed project;
  - (9) 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;
  - (10) The Borrower's, or the relevant contractor's, capacity and expertise to operate the proposed project successfully, based on factors such as financial soundness, management organization, and the nature and extent of corporate and individual experience;
  - (11) The ability of the proposed Borrower to ensure that the proposed project will comply with all applicable laws and regulations, including all applicable environmental statutes and regulations;
  - (12) The levels of market, regulatory, legal, financial, technological, and other risks associated with the proposed project and their appropriateness for a loan guarantee provided by DOE;
  - (13) Whether the Application contains sufficient information, including a detailed description of the nature and scope of the proposed project and the nature, scope, and risk coverage of the loan guarantee sought to enable DOE to perform a thorough assessment of the proposed project; and
  - (14) Such other criteria that DOE deems relevant in evaluating the merits of an Application.
- (c) After DOE completes its review and evaluation of a proposed project pursuant to § 609.5(b) and this part, DOE will notify the Applicant in writing of its determination whether to proceed with due diligence and negotiation of a Term Sheet in accordance with § 609.6. DOE will proceed only if it determines that the proposed project is highly qualified and suitable for a Guarantee. Upon written confirmation from the Applicant that it desires to proceed, DOE and the Applicant will commence negotiations.
- (d) A determination by DOE not to proceed with a proposed project following evaluation pursuant to § 609.5(b) shall be final and non-appealable, but shall not prejudice the Applicant or other affected Persons from applying for a Guarantee in respect of a different proposed project pursuant to another, separate Application.

**§ 609.6 Term sheets and conditional commitments.**

- (a) DOE, after negotiation of a Term Sheet with an Applicant, may offer such Term Sheet to an Applicant or such other Person that is an affiliate of the Applicant and that is acceptable to DOE. DOE's offer of a Term Sheet shall be in writing and signed by the Contracting Officer. DOE's negotiation of a Term Sheet imposes no obligation on the Secretary to offer a Term Sheet to the Applicant.
- (b) DOE shall terminate its negotiations of a Term Sheet if it has not offered a Term Sheet in respect of an Eligible Project within four years after the date of the written notification set forth in § 609.5(c), unless extended in writing in the discretion of the Contracting Officer.
- (c) If and when the offeree specified in a Term Sheet satisfies all terms and conditions for acceptance of the Term Sheet, including written acceptance thereof and payment of all fees specified in § 609.11(f) and therein to be paid at or prior to acceptance of the Term Sheet, the Term Sheet shall become a Conditional Commitment. Each Conditional Commitment shall include an expiration date no more than two years from the date it is issued, unless extended in writing in the discretion of the Contracting Officer. When and if all of the terms and conditions specified in the Conditional Commitment have been met, DOE and the Applicant may enter into a Loan Guarantee Agreement.
- (d) If, subsequent to execution of a Conditional Commitment, the financing arrangements of the Borrower, or in respect of an Eligible Project, change from those described in the Conditional Commitment, the Applicant shall promptly provide updated financing information in writing to DOE. All such updated information shall be deemed to be information submitted in connection with an Application and shall be subject to § 609.4(b). Based on such updated information, DOE may take one or more of the following actions:
  - (1) Determine that such changes are not material to the Borrower, the Eligible Project or DOE;
  - (2) Amend the Conditional Commitment accordingly;
  - (3) Postpone the expected closing date of the associated Loan Guarantee Agreement; or
  - (4) Terminate the Conditional Commitment.

**§ 609.7 Closing on the loan guarantee agreement.**

- (a) Subsequent to entering into a Conditional Commitment with an Applicant, DOE, after consultation with the Applicant, will set a closing date for execution of a Loan Guarantee Agreement.
- (b) Prior to or on the closing date of a Loan Guarantee Agreement, DOE will ensure that:
  - (1) An appropriation for the Credit Subsidy Cost has been made;
  - (2) DOE has received from the Applicant the Facility Fee referred to in § 609.11(b);
  - (3) OMB has reviewed and approved DOE's calculation of the Credit Subsidy Cost of the Guarantee;
  - (4) The Department of the Treasury has been consulted as to rate of interest charged to the Borrower on the Guaranteed Obligation;



- (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;
- (6) Each holder of the Guaranteed Obligations is an Eligible Lender, and the servicer of the Guaranteed Obligations meets the servicing performance requirements of § 609.9(b);
- (7) [Intentionally omitted]
- (8) All conditions precedent specified in the Conditional Commitment are either satisfied or waived by the Contracting Officer and all other applicable contractual, statutory, and regulatory requirements have been satisfied or waived by the Contracting Officer. If the counterparty to the Conditional Commitment has not satisfied all such terms and conditions on or prior to the closing date of the Loan Guarantee Agreement, the Secretary may, in his discretion, set a new closing date, or terminate the Conditional Commitment; and
- (9) Prior to Closing, the Applicant must provide a credit rating from a nationally recognized rating agency reflecting the Conditional Commitment for the Project without a Federal guarantee, or another indication of the credit strength of the Project acceptable to DOE in its sole discretion. If a credit rating is required, an updated rating must be provided to the Secretary not later than 30 days prior to closing.

**§ 609.8 Loan guarantee agreement.**

- (a) Only a Loan Guarantee Agreement executed by the Contracting Officer can obligate DOE to issue a Guarantee in respect of Guaranteed Obligations.
- (b) DOE is not bound by oral representations.
- (c) Each Loan Guarantee Agreement shall contain the following requirements and conditions, and shall not be executed until the Contracting Officer determines that the following requirements and conditions are satisfied:
  - (1) The guaranteed portion of a loan may be separated from or “stripped” from the non-guaranteed portion of the Guaranteed Obligation, if the loan is participated, syndicated or otherwise resold in the secondary debt market;
  - (2) The Borrower shall be obligated to make full repayment of the principal and interest on the Guaranteed Obligations and other debt of a Borrower over a period of up to the lesser of 30 years or 90 percent of the projected useful life of the Eligible Project's major physical assets, as calculated in accordance with U.S. generally accepted accounting principles and practices. The non-guaranteed portion (if any) of any Guaranteed Obligations must be repaid *pro rata*, and on the same amortization schedule, with the guaranteed portion.
  - (3) If any financing or credit arrangement of the Borrower or relating to the Eligible Project, other than the Guaranteed Obligations, has an amortization period shorter than that of the Guaranteed Obligations, DOE shall have determined that the resulting financing structure allocates to DOE a reasonably proportionate share of the default risk, in light of:
    - (i) DOE's share of the total debt financing of the Borrower,

- (ii) Risk allocation among the credit providers to the Borrower, and
  - (iii) Internal and external credit enhancements.
- (4) The loan guarantee is consistent with the requirements of section 149(b) of the Internal Revenue Code with respect to federal financing, directly or indirectly, of tax-exempt debt;
  - (5) The principal amount of the Guaranteed Obligations, when combined with funds from other sources committed and available to the Borrower, shall be sufficient to pay for expected Project Costs (including adequate contingency amounts), the applicable items specified in § 609.10(b), and otherwise to carry out the Eligible Project;
  - (6) There shall be a reasonable prospect of repayment by the Borrower of the principal of and interest on the Guaranteed Obligations and all of its other debt obligations;
  - (7) The Borrower shall pledge collateral or surety determined by DOE to be necessary to secure the repayment of the Guaranteed Obligations. Such collateral or security may include Eligible Project assets and assets not related to the Eligible Project;
  - (8) The Loan Guarantee Agreement and related documents shall include detailed terms and conditions that DOE deems necessary and appropriate to protect the interests of the United States in the case of default, including ensuring availability of all relevant intellectual property rights, technical data including software, and technology necessary for DOE or any Person selected by DOE, to complete, operate, convey, and dispose of the defaulted Borrower or the Eligible Project;
  - (9) The Guaranteed Obligations shall not be subordinate to other financing. Guaranteed Obligations are not subordinate to other financing if the lien on property securing the Guaranteed Obligations, together with liens that are *pari passu* with such lien, if any, take priority or precedence over other charges or encumbrances upon the same property and must be satisfied before such other charges are entitled to participate in proceeds of the property's sale. In DOE's discretion, Guaranteed Obligations may share a lien position with other financing;
  - (10) There is satisfactory evidence that the Borrower will diligently pursue the Eligible Project and is willing, competent, and capable of performing its obligations under the Loan Guarantee Agreement and the loan documentation relating to its other debt obligations;
  - (11) The Borrower shall have paid all fees and expenses due to DOE or the U.S. Government, including such amount of the Credit Subsidy Cost as may be due and payable from the Borrower pursuant to the Conditional Commitment, upon execution of the Loan Guarantee Agreement;
  - (12) The Borrower, any Eligible Lender, and each other relevant party shall take, and be obligated to continue to take, those actions necessary to perfect and maintain liens on collateral in respect of the Guaranteed Obligations;
  - (13) DOE or its representatives shall have access to the offices of the Borrower and the Eligible Project site at all reasonable times in order to monitor the—

- (i) Performance by the Borrower of its obligations under the Loan Guarantee Agreement; and
  - (ii) Performance of the Eligible Project;
- (14) DOE and Borrower have reached an agreement regarding the information that will be made available to DOE and the information that will be made publicly available;
- (15) The Borrower shall have filed applications for or obtained any required regulatory approvals for the Eligible Project and is in compliance, or promptly will be in compliance, where appropriate, with all Federal, state, and local regulatory requirements;
- (16) The Borrower shall have no delinquent Federal debt;
- (17) The Project Sponsors have made or will make a significant Equity investment in the Borrower or the Eligible Project, and will maintain control of the Borrower or the Eligible Project as agreed in the LGA; and
- (18) The Loan Guarantee Agreement and related agreements shall include such other terms and conditions as DOE deems necessary or appropriate to protect the interests of the United States.
- (d) The Loan Guarantee Agreement shall provide that, in the event of a default by the Borrower:
- (1) Interest on the Guaranteed Obligations shall accrue at the rate stated in the Loan Guarantee Agreement or the Loan Agreement, until DOE makes full payment of the defaulted Guaranteed Obligations, and DOE shall not be required to pay any premium, default penalties, or prepayment penalties; and
  - (2) The holder of collateral pledged in respect of the Guaranteed Obligations shall be 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.
- (e) (1) An Eligible Lender or other Holder may sell, assign or transfer a Guaranteed Obligation to another Eligible Lender that meets the requirements of § 609.9. Such latter Eligible Lender shall be required to assume all servicing, monitoring and reporting requirements as provided in the Loan Guarantee Agreement. Any transfer of the servicing, monitoring, and reporting functions shall be subject to the prior written approval of DOE.
- (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 Guaranteed Obligations, shall include in the Loan Guarantee Agreement or related documents a procedure for tracking and identifying Holders of Guaranteed Obligations. Any contractual agent approved by the Secretary to perform this function may transfer or assign this responsibility only with the Secretary's prior written approval.
- (f) Each Loan Guarantee Agreement shall require the Borrower to make representations and warranties, agree to 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 the Cargo Preference Act, to the extent required by applicable law.

- (g) The Applicant, the Borrower or the Project Sponsor must estimate, calculate, record, and provide to DOE any time DOE requests such information and at the times provided in the Loan Guarantee Agreement all costs incurred in the design, engineering, financing, construction, startup, commissioning and shakedown of the Eligible Project in accordance with generally accepted accounting principles and practices.

**§ 609.9 Lender servicing requirements.**

- (a) When reviewing and evaluating a proposed Eligible Project, all Eligible Lenders shall at all times exercise the level of care and diligence that a reasonable and prudent lender would exercise when reviewing, evaluating and disbursing a loan made by it without a Federal guarantee.
- (b) Loan servicing duties shall be performed by an Eligible Lender, DOE, or another qualified loan servicer approved by DOE. When performing its servicing duties, the loan servicer shall at all times exercise the level of care and diligence that a reasonable and prudent lender would exercise when servicing a loan made without a Federal guarantee, including:
  - (1) During the construction period, monitoring the satisfaction of all of the conditions precedent to all loan disbursements, as provided in the Loan Guarantee Agreement, Loan Agreement or 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 undertaking to ensure that the collateral package securing the Guaranteed Obligations remains uncompromised; and
  - (3) Until the Guaranteed Obligation has been repaid, providing annual or more frequent financial and other reports on the status and condition of the Guaranteed Obligations and the Eligible Project, and promptly notifying DOE if it becomes aware of any problems or irregularities concerning the Eligible Project or the ability of the Borrower to make payment on the Guaranteed Obligations or its other debt obligations.

**§ 609.10 Project costs.**

- (a) 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;
  - (3) Costs of equipment purchases, including a reasonable reserve of spare parts to the extent required;
  - (4) Costs to provide facilities and services related to safety and environmental protection;

- (5) Costs of financial, legal, and other professional services, including services necessary to obtain required licenses and permits and to prepare environmental reports and data;
  - (6) Costs of issuing Eligible Project debt, such as fees, transaction, and costs referred to in § 609.10(a)(5), and other customary charges imposed by Eligible Lenders;
  - (7) Costs of necessary and appropriate insurance and bonds of all types including letters of credit and any collateral required therefor;
  - (8) Costs of design, engineering, startup, commissioning and shakedown;
  - (9) Costs of obtaining licenses to intellectual property necessary to design, construct, and operate the Eligible Project;
  - (10) To the extent required by the Loan Guarantee Agreement and not intended or available for any cost referred to in §609.10(b), costs of funding any reserve fund, including without limitation, a debt service reserve, a maintenance reserve, and a contingency reserve for cost overruns during construction; provided that proceeds of a Guaranteed Loan deposited to any reserve fund shall not be removed from such fund except to pay Project Costs, to pay principal of the Guaranteed Loan, or otherwise to be used as provided in the Loan Guarantee Agreement;
  - (11) Capitalized interest necessary to meet market requirements and other carrying costs during construction; and
  - (12) Other necessary and reasonable costs.
- (b) 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-Eligible 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 an innovative technology for employment in a commercial project;
  - (6) Costs that are excessive or are not directly required to carry out the Eligible Project, as determined by DOE;
  - (7) Expenses incurred after startup, commissioning, and shakedown before the facility, or, in DOE's discretion, any portion of the facility, has been placed in service;

- (8) [Intentionally omitted]; and
- (9) Operating costs.

**§ 609.11 Fees and charges.**

- (a) [Intentionally omitted]
- (b) DOE may charge Applicants a non-refundable Facility Fee, with a portion being payable on or prior to the date on which the Applicant executes the Commitment Letter and the remainder being payable on or prior to the closing date for the Loan Guarantee Agreement.
- (c) In order to encourage and supplement private lending activity DOE may collect from Borrowers for deposit in the United States Treasury a non-refundable Risk-Based Charge which, together with the interest rate on the Guaranteed Obligation that LPO determines to be appropriate, will take into account the prevailing rate of interest in the private sector for similar loans and risks. The Risk-Based Charge shall be paid at such times and in such manner as may be determined by DOE, but no less frequently than once each year, commencing with payment of a pro-rated payment on the date the Guarantee is issued. The amount of the Risk-Based Charge will be specified in the Loan Guarantee Agreement.
- (d) DOE may collect a maintenance fee to cover DOE's administrative expenses, other than extraordinary expenses, incurred in servicing and monitoring a Loan Guarantee Agreement. The maintenance fee shall accrue from the date of execution of the Loan Guarantee Agreement through the date of payment in full of the related Guaranteed Obligations. If DOE determines to collect a maintenance fee, it shall be paid by the Borrower each year (or portion thereof) in advance in the amount specified in the applicable Loan Guarantee Agreement.
- (e) In the event a Borrower or an Eligible Project experiences difficulty relating to technical, financial, or legal matters or other events (*e.g.*, engineering failure or financial workouts), the Borrower shall be liable as follows:
  - (1) If such difficulty requires DOE to incur time or expenses beyond those customarily expended to monitor and administer performing loans, DOE may collect an extraordinary expenses fee from the Borrower that will reimburse DOE for such time and expenses, as determined by DOE; and
  - (2) For all fees and expenses of DOE's independent consultants and outside counsel, to the extent that such fees and expenses are elected to be paid by DOE notwithstanding the provisions of paragraphs (f) and (g) of this section.
- (f) Each Applicant, Borrower or Project Sponsor, as applicable, shall be responsible for the payment of all fees and expenses charged by DOE's independent consultants and outside legal counsel in connection with an Application, Conditional Commitment or Loan Guarantee Agreement, as applicable. Upon making a determination to engage independent consultants or outside counsel with respect to an Application, DOE will proceed to evaluate and process such Application only following execution by an Applicant, Borrower or Project Sponsor, as appropriate, of an agreement satisfactory to DOE to pay the fees and expenses charged by the independent consultants and outside legal counsel. Appropriate provisions regarding payment of such fees and expenses shall also be included in each Term Sheet and Loan Guaranty Agreement or, upon a determination by

DOE, in other appropriate agreements.

- (g) Notwithstanding payment by Applicant, Borrower or Project Sponsor, all services rendered by an independent consultant or outside legal counsel to DOE in connection with an Application, Conditional Commitment or Loan Guarantee Agreement shall be solely for the benefit of DOE (and such other creditors as DOE may agree in writing). DOE may require, in its discretion, the payment of an advance retainer to such independent consultants or outside legal counsel as security for the collection of the fees and expenses charged by the independent consultants and outside legal counsel. In the event an Applicant, Borrower or Project Sponsor fails to comply with the provisions of such payment agreement, DOE in its discretion, may stop work on or terminate an Application, a Conditional Commitment or a Loan Guarantee Agreement, or may take such other remedial measures in its discretion as it deems appropriate.
- (h) DOE shall not be financially liable under any circumstances to any independent consultant or outside counsel for services rendered in connection with an Application, Conditional Commitment or Loan Guarantee Agreement except to the extent DOE has previously entered into an express written agreement to pay for such services.

**§ 609.12 Full faith and credit and incontestability.**

The full faith and credit of the United States is pledged to the payment of principal and interest of Guaranteed Obligations pursuant to Guarantees issued in accordance with the Act, the Solicitation and this Attachment C. The issuance by DOE of a 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 shall be legal, valid, binding and enforceable against DOE in accordance with its terms.

**§ 609.13 Default, demand, payment, and foreclosure on collateral.**

- (a) If a Borrower defaults in making a required payment of principal or interest on a Guaranteed Obligation and such default has not been cured within the applicable grace period, the Holder may make written demand for payment upon the Secretary in accordance with the terms of the applicable Guarantee. If a Borrower defaults in making a required payment of principal or interest on a Guaranteed Obligation and such default has not been cured within the applicable grace period, the Secretary shall notify the Attorney General.
- (b) Subject to the terms of the applicable Guarantee, the Secretary shall make payment within 60 days after receipt of written demand for payment from the Holder, provided that the demand for payment complies in all respects with the terms of the applicable Guarantee. Interest shall accrue to the Holder at the rate stated in the promissory note evidencing the Guaranteed Obligation, without giving effect to the Borrower's default in making a required payment of principal or interest on the applicable Guarantee Obligation or any other default by the Borrower, until the Guaranteed Obligation has been fully paid by DOE. Payment by the Secretary on the applicable Guarantee does not change Borrower's obligations under the promissory note evidencing the Guaranteed Obligation, Loan Guarantee Agreement, Loan Agreement or related documents, including an obligation to pay default interest.
- (c) Following payment by the Secretary pursuant to the applicable Guarantee, upon demand by DOE, the Holder shall transfer and assign to the Secretary (or his designee or agent) the promissory note evidencing the Guaranteed Obligation, all rights and interests of the Holder in the Guaranteed

Obligation, and all rights and interests of the Holder in respect of the Guaranteed Obligation, except to the extent that the Secretary determines that such promissory note or any of such rights and interests shall not be transferred and assigned to the Secretary. Such transfer and assignment shall include, without limitation, all of the liens, security and collateral rights of the Holder (or his designee or agent) in respect of the Guaranteed Obligation.

- (d) Following payment by the Secretary pursuant to a Guarantee or other default of a Guaranteed Obligation, the Secretary is authorized to protect and foreclose on the collateral, take action to recover costs incurred by, and all amounts owed to, the United States as a result of the defaulted Guarantee Obligation, and take such other action necessary or appropriate to protect the interests of the United States. In respect of any such authorized actions that involve a judicial proceeding or other judicial action, the Secretary shall act through the Attorney General. The foregoing provisions of this paragraph shall not relieve the Secretary from its obligations pursuant to any applicable Intercreditor Agreement. Nothing in this paragraph shall limit the Secretary from exercising any rights or remedies pursuant to the terms of the Loan Guarantee Agreement.
- (e) The cash proceeds received as a result of any foreclosure on the collateral, or other action, shall be distributed in accordance with the Loan Guarantee Agreement (subject to any applicable Intercreditor Agreement).
- (f) [Intentionally omitted]
- (g) No action taken by the Holder or its agent or designee in respect of any collateral will affect the rights of any person, including the Secretary, having an interest in the Guaranteed Obligations or other debt obligations, to pursue, jointly or severally, legal action against the Borrower or other liable persons, for any amounts owing in respect of the Guaranteed Obligation or other applicable debt obligations.
- (h) In the event that the Secretary considers it necessary or desirable to protect or further the interest of the United States in connection with exercise of rights as a lien holder or recovery of deficiencies due under the Guaranteed Obligation, the Secretary may take such action as he determines to be appropriate under the circumstances.
- (i) Nothing in this part precludes, nor shall any provision of this part be construed to preclude, the Secretary from purchasing any collateral or Holder's or other Person's interest in the Eligible Project upon foreclosure of the collateral.
- (j) Nothing in this part precludes, nor shall any provision of this part be construed to preclude, forbearance by any Holder with the consent of the Secretary for the benefit of the Borrower and the United States.
- (k) The Holder and the Secretary may agree to a formal or informal plan of reorganization in respect of the Borrower, to include a restructuring of the Guaranteed Obligation and other applicable debt of the Borrower on such terms and conditions as the Secretary determines are in the best interest of the United States.

**§ 609.14 Preservation of collateral.**

- (a) If the Secretary exercises his right under the Loan Guarantee Agreement to require the holder of pledged collateral to 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 collateral, the Secretary shall, subject to compliance with the Antideficiency Act, 31 U.S.C. 1341 *et seq.*, reimburse the holder of such collateral for reasonable and appropriate expenses incurred in taking actions required by the Secretary (unless otherwise provided in applicable agreements). Except as provided in § 609.13, no party may waive or relinquish, without the consent of the Secretary, any such collateral 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 he determines are required or appropriate, taking into account the term of any applicable Intercreditor Agreement, to care for, preserve, protect or maintain collateral pledged in respect of Guaranteed Obligations. The cost of such contracts may be charged to the Borrower.

#### **§ 609.15 Audit and access to records.**

Each Loan Guarantee Agreement and related documents shall provide that:

- (a) The Eligible Lender or other Holder or other party servicing the Guaranteed Obligations, as applicable, and the Borrower, shall keep such records concerning the Eligible Project as are necessary, including the Application, Term Sheet, Conditional Commitment, Loan Guarantee Agreement, Credit Agreement, mortgage, note, disbursement requests and supporting documentation, financial statements, audit reports of independent accounting firms, lists of all Eligible Project assets and non-Eligible Project assets pledged in respect of the Guaranteed Obligations, all off-take and other revenue producing agreements, documentation for all Eligible Project indebtedness, income tax returns, technology agreements, documentation for all permits and regulatory approvals and all other documents and records relating to the Borrower or the Eligible Project, as determined by the Secretary, to facilitate an effective audit and performance evaluation of the Eligible Project; and
- (b) The Secretary and the Comptroller General, or their duly authorized representatives, shall have access, for the purpose of audit and examination, to any pertinent books, documents, papers and records of the Borrower, Eligible Lender or DOE or other Holder or other party servicing the Guaranteed Obligation, as applicable. Such inspection may be made during regular office hours of the Borrower, Eligible Lender or DOE or other Holder, or other party servicing the Eligible Project and the Guaranteed Obligations, as applicable, or at any other time mutually convenient.

#### **§ 609.16 Deviations.**

- (a) To the extent that the requirements under this part are not specified by the Act or other applicable statutes, DOE may authorize deviations from the requirements of this part upon:
  - (1) Either receipt from the Applicant, Borrower or Project Sponsor, as applicable, of—
    - (i) A written request that the Secretary deviate from one or more requirements; and
    - (ii) A supporting statement briefly describing one or more justifications for such deviation; or
    - (iii) A determination by the Secretary in his discretion to undertake a deviation;

- (2) A finding by the Secretary that such deviation supports program objectives and the special circumstances stated in the request make such deviation clearly in the best interest of the Government; and
  - (3) If the waiver would constitute a substantial change in the financial terms of the Loan Guarantee Agreement and related documents, and DOE deems such consultation to be required under the circumstances, consultation by DOE with OMB and/or the Secretary of the Treasury.
- (b) If a deviation under this section results in an increase in the applicable Credit Subsidy Cost, such increase shall be funded either by additional fees paid by means of an appropriations act.

## ATTACHMENT D – REQUIRED DAVIS-BACON PROVISIONS

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I. Definitions. For purposes of this Attachment D and Section 1 of Attachment E, 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 additional terms set forth below:

“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).

“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.

“Construction, prosecution, completion, or repair” or “performance of the Project” means the following:

- (1) (A) 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); and
    - (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 (1)(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”.

“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.

“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.

“Site of the work” is defined as follows:

- (1) 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;
- (2) Except as provided in (iii) of this definition, 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 clause (i) of this definition;
- (3) 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 clause (i) of this definition, 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.

“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.

## II. Other Required Provisions.

### (A) 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 Section II(A)(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 Section II(D) 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 Section II(A)(ii) of this Attachment) 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 Sections II(A)(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.

**(B) 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.

**(C) 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 Section II(C)(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 Section II(C)(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 Section II(C)(ii) of this Attachment, the appropriate information is being maintained under Section II(C)(ii) 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 Section II(C)(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.

**(D) Apprentices and trainees.**

(1) 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.

(2) 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.

(3) 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.

(E) 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.

(F) Subcontracts. The Borrower and any higher or lower tier Contract Party shall insert in any Davis-Bacon Act Covered Contract the clauses contained in Section II 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 Section II of this Attachment.

**(G) Contract termination; debarment.** A breach of any of the contract clauses in Section II of 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 Section II(G) shall not apply to the Loan Agreement but that, in lieu of the application of such termination provision of Section II(G), the remedies available to DOE under Section [x] of the Loan Agreement shall apply upon such an Event of Default.

**(H) 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.

**(I) 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 Department of Labor, or the employees or their representatives.

**J. Certification of eligibility.**

(1) 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).

(2) 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).

(3) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

## ATTACHMENT E – Specified Terms and Conditions of Guaranteed Obligations

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This Attachment E sets out certain parameters for loans eligible to receive loan guarantees from the DOE under this Solicitation. This includes certain terms and conditions required to be incorporated into an Applicant's proposed loan structure and documentation. Attachment E also summarizes the essential terms and conditions of the Loan Guarantee Agreement under this Solicitation. This Attachment E supplements Attachment C and also provides for specific implementation of certain of Attachment C's requirements, including Section 609. Lender Applicants, however, must separately consider and assure their compliance with the broader requirements of Attachment C. Moreover, DOE reserves the right to amend the terms of this Attachment E and the form Loan Guarantee Agreement referred to below to any extent DOE considers desirable or appropriate to serve the programmatic objectives of the Act and TELGP based on the experience DOE gains in connection with this Solicitation. DOE will post any such material amendment on the Program Website.

Section 1 of this Attachment E identifies certain key terms and conditions for Loan Agreements and Intercreditor Agreements eligible for DOE loan guarantees under the Solicitation. 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 E, 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 E, as well as with those set out in Attachment C and Attachment G. 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 Solicitation, 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 E.

**Guaranteed Obligations:** Pursuant to the terms of the Loan Guarantee Agreement described in Section 2 below, DOE will guarantee up to ninety percent (90%) 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 customary third-party liens. 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 payment of the Risk-Based Charge is to be treated equally with interest in distribution priority. The DOE's annual maintenance 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. A Guaranteed Obligation may be divided into two or more loans or tranches, provided that no more than 90% 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 90% of any such loan or tranche, however, may be covered by the DOE loan guarantee. 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.

**Interest Rate:** The interest rate on any Guaranteed Obligation must be 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.

**Risk-Based Charge:** A Risk-Based Charge shall be assessed at Closing and payable in accordance with the Loan Guarantee Agreement.

**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:

1. 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;
2. the Loan Agreement shall provide for usual and customary automatic acceleration upon the occurrence of a bankruptcy filing or other insolvency event;
3. 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:
  - a. 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 the Holders of a majority of the Guaranteed Obligation 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;
  - b. 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
  - c. in the event that DOE does not accelerate and exercise remedies within 270 days following such payment default, then the Holders of a two-thirds majority of the Guaranteed Obligation may vote to accelerate and exercise remedies; and
4. 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:

5. the maintenance fee, payable to DOE annually in advance beginning on the closing date, as described in Section VIII of the Solicitation;
6. the fees of DOE's Master Servicer (as described in Attachment G), to be paid on a quarterly basis pursuant to a fee agreement (substantially in the form to be posted on the Program Website) 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

7. 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 in its sole discretion 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 and this Solicitation. 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 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 G. 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 609.8(d)(14) of Attachment C:

*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.*

## Section 2 - Loan Guarantee Agreement

Loan Guarantee Agreement: DOE will develop a template form of Loan Guarantee Agreement for use under the Solicitation. 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.

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 ninety percent (90%) 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 ninety percent (90%) 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 609.8(d)(1) of Attachment C, 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.

1. 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.
2. 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.
3. 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.

**Risk-Based Charge:** The Loan Guarantee Agreement and related loan documentation will contain provisions for the payment of the Risk-Based Charge to DOE.

**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.



1. 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.
2. Subject to DOE's prior written consent, which shall not be unreasonably withheld or delayed, Holders (as defined in 609.2 of Attachment C) 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 F, provided that:
  - a. 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
  - b. 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 F, or (iii) a special purpose entity wholly owned and controlled or exclusively managed by the transferring Holder.

Certifications: Each Holder, 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 F 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.*

## ATTACHMENT F – REQUIRED QUALIFICATIONS OF LEAD LENDERS AND HOLDERS

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This Attachment F 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 C), 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 the Act and the Solicitation 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 Applicant that becomes a Lead Lender and Holder (as defined in Section 609.2 of Attachment C), at the time of the execution of the Loan Agreement and the Loan Guarantee Agreement, (i) shall be (x) regulated by a Federal financial institution regulatory agency, or (y) if not so regulated, satisfy such financial and capital requirements as are determined by DOE to be required based on the proposed debt structure, including minimum net worth requirements based on business volume; and (ii) shall satisfy the qualifications of an Eligible Lender, as required by Section 609.9 of Attachment C.

As described more fully in Section I.B 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 F, “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 G – Post-Closing Servicing and Monitoring

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### Master Servicer Overview.

As described in Section I.B of the Solicitation and in Attachment E, Administrative Agents shall perform the primary loan administration or servicing functions, including the servicing duties set forth in Section 609.9 of Attachment C, 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. The Borrower 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 DOE, 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 609.8(e)(2) of Attachment C, 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 LPO 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 VI of the Solicitation, 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 E 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 609.9 of Attachment C.

Further, consistent with Section 609.8(e)(2) of Attachment C, 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.

#### Loan Monitoring Responsibilities.

The Master Servicer will also be required to support LPO 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 2 of Attachment E 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 TELGP 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 DOE 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 C 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 E 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.