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## Opening Act: 2 DOE Loan Guarantee Solicitations

*Law360, New York (August 24, 2009)* -- Following the announcement by the U.S. Department of Energy on July 29, 2009, of the first two solicitations released by DOE since the loan guarantee program was expanded in February 2009 under the American Recovery and Reinvestment Act, many potential project sponsors continue to await DOE's release of broader solicitations for renewable energy projects employing commercial technologies, expected through a prequalified lender program, and the impact of Congress' recent reallocation of \$2 billion from the loan guarantee program to the "cash-for-clunkers" program.

For projects that meet the requirements of DOE's opening act, and for those who continue to wait, the program still holds promise to increase the availability of financing and dramatically reduce financing costs.

In any event, borrowers will have to move quickly: the first application due date under the initial solicitations is Sept. 14, 2009, and projects must commence construction by Sept. 30, 2011.

The first solicitation focuses on projects ready for commercial development that avoid, reduce or sequester air pollutants or anthropogenic emissions of greenhouse gases, and employ "new or significantly improved technologies" as compared to "commercial technology" (generally, technology that has been used for at least five years in at least three commercial projects).

Projects that are currently at the pilot stage or which have not completed a full-scale demonstration project will not be "commercialization ready" and therefore not eligible.

The lending authority under the July solicitations includes up to \$2.5 billion in credit subsidy costs, of which up to \$500 million in credit subsidy costs is for cutting-edge biofuel projects.

Projects employing the following categories of technologies are potentially eligible under the program and for government payment of credit subsidy costs:

- Biomass;
- Efficient Electricity Transmission, Distribution and Storage;
- Geothermal;
- Solar; and
- Wind and Hydro Power

The solicitation also provides for \$8.5 billion in traditional loan guarantee authority where projects (including alternative fuel vehicles, energy efficient building technologies and applications, hydrogen and fuel cell technologies, and energy efficiency projects) must pay the credit subsidy cost themselves.

Fees are nonrefundable and for the application range from \$75,000 to \$125,000, for the upfront facility fee from 1 percent of the guaranteed amount for smaller projects to \$1,675,000 + 0.5 percent of the guaranteed amount for guarantees over \$500 million, and for the annual maintenance fee are expected to be \$50,000 to \$100,000.

An eligible project under the second solicitation will consist of a complex electric transmission systems project located in the U.S. that utilizes a “commercial technology;” is reasonably likely to commence construction by Sept. 30, 2011; cannot be financed from private sources on standard commercial terms; meets all applicable requirements of Section 1705, the ARRA and the solicitation; and meets at least one of the following criteria:

- involves new or upgraded lines of at least 100 miles of 500 kV or 150 miles of 345 kV.
- has at least 30 miles of transmission cable under water.
- has a high voltage direct current (DC) component.
- is a major interregional connector.
- is designated as a National Interest Electric Transmission Corridor.
- is associated with offshore generation.
- mitigates a substantial reliability risk for a major population center.
- includes a set of improvements to an integrated system within a state or region that together aggregate to meet the criteria above.

The fees under the second solicitation are significantly higher than under other loan guarantee solicitations and reflect the focus on very large transmission projects, with an initial nonrefundable application fee of \$200,000 due at the submission date for Part 1 of the application, and \$600,000 due at the submission date for Part 2 of the application.

These high initial fees may raise concerns with prospective participants who are uncertain whether a project is eligible or that the DOE would ultimately approve the application.

The upfront facility fee would be 0.5 percent of the guaranteed amount, with an expected annual maintenance fee of \$200,000 to \$400,000.

There are sure to be more acts to follow, as DOE attempts to improve the loan guarantee program and implement the ARRA's call for the rapid deployment of renewable energy and electric power transmission projects.

--By John P. Hammond (pictured) and Gregory K. Lawrence, McDermott Will & Emery LLP

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