

**SUPPLEMENT TO AMENDED AND RESTATED LOAN GUARANTEE  
SOLICITATION ANNOUNCEMENT  
FEDERAL LOAN GUARANTEES FOR  
TRIBAL ENERGY DEVELOPMENT PROJECTS**

**Solicitation Number: 8930318RLP000005  
OMB Control Number: 1910-5134 [extension pending]  
Announcement Type: Supplemental  
Supplement dated as of July 22, 2022**

The above-referenced Solicitation Announcement (the “Solicitation”) is supplemented as set forth below (capitalized terms used herein and not otherwise defined have the meanings ascribed thereto in the Solicitation):

The Consolidated Appropriations Act, 2022, Public Law No. 117-103 (the “FY22 Appropriations Act”) provides that:

- (1) under section 2602(c) of the Energy Policy Act of 1992 (25 U.S.C. 3502(c)), the Secretary of Energy may also provide direct loans, as defined in section 502 of the Congressional Budget Act of 1974 (2 U.S.C. 661a);
- (2) such direct loans shall be made through the Federal Financing Bank, with the full faith and credit of the United States Government on the principal and interest; and
- (3) any funds previously appropriated for the cost of loan guarantees under section 2602(c) of the Energy Policy Act of 1992 (25 U.S.C. 3502(c)) may also be used for the cost of direct loans provided under such section of such Act.

In accordance thereof, this Supplement modifies the Solicitation to invite applications (“Applications”) to be submitted by Eligible Borrowers for direct loans to be made through the Federal Financing Bank (“FFB”) with the full faith and credit of the United States Government on the principal and interest thereof to finance Eligible Projects.

The first page of the Solicitation is amended by replacing:

**Last Part I Submission Due Date:** **March 16, 2025**

**Last Part II Submission Due Date:** **March 16, 2025**

with:

**Last Part I Submission Due Date (TELGP):** **March 16, 2025**

**Last Part II Submission Due Date (TELGP):** **March 16, 2025**

**Last Part I Submission Due Date (TELP):** **September 30, 2022**

**Last Part II Submission Due Date (TELP):** **September 30, 2022**

Section I “Purpose of the Solicitation” is amended by replacing such section in its entirety with the following:

## **I. Purpose of Solicitation**

### **A. Loan Guarantee Program (TELGP)**

Applicants are invited to apply for loan guarantees from the United States Department of Energy (“**DOE**”) under Section 2602(c) of the Energy Policy Act of 1992, as amended (“**the Act**”)<sup>1</sup>. The Act authorizes the Secretary of Energy (the “**Secretary**”) to issue loan guarantees of up to 90% of loans made to an Indian tribe or a tribal energy development organization (“**TEDO**”) for energy development. DOE’s processing of loan guarantee applications under this authority is administered through the Tribal Energy Loan Guarantee Program (“**TELGP**”) and as further defined through this amended and restated solicitation.

An application under TELGP can be submitted exclusively by an entity that meets the qualifications of an “Eligible Lender” defined below. The Eligible Lender will fund and be required to hold all or a portion of the debt obligation that is the subject of DOE’s partial guarantee. Eligible Borrowers, as defined below, may hold pre-application discussions with DOE. However, Eligible Borrowers may not apply directly to DOE but must instead work with an Eligible Lender in order to access a loan guarantee.

### **B. Direct Loan Program (TELP)**

Applicants are invited to apply for direct loans from the United States Department of Energy (“**DOE**”) under the FY22 Appropriations Act. The FY22 Appropriations Act authorizes the Secretary to provide direct loans through the Federal Financing Bank to an Indian tribe or TEDO for energy development (“**TELP**”) from funds available under TELGP. The TELP authority expires September 30, 2022.

An application under TELP can be submitted exclusively by an entity that meets the qualifications of an “Eligible Borrower” defined below. Eligible Borrowers, as defined below, may hold pre-application discussions with DOE.

Except as otherwise stated in this Solicitation, the application and evaluation process for TELP is the same as the process for TELGP.

TELGP and TELP are key parts of the DOE’s support of the Justice40 Initiative, which aims to provide 40 percent of the overall benefits of certain Federal investments—including investments in clean energy and energy efficiency—to disadvantaged communities. DOE has identified the following non-exhaustive list of policy priorities as examples to guide DOE’s implementation of Justice40 in disadvantaged and Tribal communities: (1) decrease energy burden; (2) decrease environmental exposure and burdens; (3) increase access to low-cost capital; (4) increase the clean energy job pipeline and job training for individuals; (5) increase clean energy enterprise creation (e.g., minority -owned or disadvantaged business enterprises); (6) increase energy democracy, including community ownership and other economic benefits

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<sup>1</sup> 25 USC Section 3502(c)

associated with the energy transition; (7) increase parity in clean energy technology access and adoption; and (8) increase energy resilience.

In support of Justice40, this amended and restated solicitation incorporates consideration of policy factors related to job quality, responsible contractor standards, workforce diversity, equity, inclusion, and accessibility goals. It also incorporates hiring goals for underserved or disadvantaged communities as detailed in recent Executive Orders.<sup>2</sup> Application, facility, and maintenance fees payable to DOE are also eliminated. It also clarifies borrower and project eligibility requirements to include potentially a broad range of project types and structures, including those utilizing tax equity.

The DOE Loan Programs Office (“LPO”) has established a two-part application process for loan guarantees under TELGP and direct loans under TELP. In Part I of the process, the Applicant is invited to provide the basis for the Project’s eligibility for a loan guarantee and explain the project’s readiness to proceed further into the application process. If LPO finds a project qualified under a Part I application, then the Applicant will be invited to Part II of the process. In Part II of the Application, the Applicant will provide further information that LPO will use to determine whether there is a “reasonable prospect of repayment” of the potential loan to be guaranteed or potential direct loan and the level of due diligence required to proceed further into the application process. This Solicitation describes the information requirements for Part I and Part II applications, as well as certain statutory and programmatic requirements<sup>3</sup> and guidance under which LPO administers the TELGP and TELP programs.

DOE may provide up to two billion dollars (\$2,000,000,000), in aggregate, in partial loan guarantees and direct loans under this Solicitation. Eight million five hundred thousand dollars (\$8,500,000) in appropriated funds is available to pay the Credit Subsidy Costs associated with such loan guarantees and direct loans.

Applicants must submit Applications in response to this Solicitation in accordance with the instructions provided in Section VI, Attachment A and Attachment B. Applicants should refer to Attachment F for the definition of all terms not otherwise defined within the body of the Solicitation.

Section II.A “Project Eligibility” is amended by replacing each occurrence of “With respect to a potential DOE guarantee of any loan” with “With respect to a potential DOE direct loan or guarantee of any loan”.

Section II.B “Energy Development” is amended by deleting the first sentence of the Section and replacing it with “Loans guaranteed under TELGP and direct loans under TELP must be used by an Eligible Borrower for energy development.”

Section II.D “Eligible Applicants” is amended by deleting the first paragraph of the Section and replacing it with “Eligible Applicants under TELGP are expected to be Eligible Lenders that have existing relationships with Eligible Borrowers for an Eligible Project. Eligible Applicants under TELP are expected to be Eligible Borrowers.”

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<sup>2</sup> EO 13985: [Advancing Racial Equity and Support for Underserved Communities Through the Federal Government](#); EO 14020: [Executive Order on Establishment of the White House Gender Policy Council](#) | The White House; EO 14008: [Tackling the Climate Crisis at Home and Abroad](#)

<sup>3</sup> This Solicitation is issued under the Act and is subject to all the terms and conditions of the Act and the programmatic requirements set forth in Attachment F of this Solicitation. Copies of the authorities cited herein may be found at [TRIBAL ENERGY LOAN GUARANTEE PROGRAM | Department of Energy](#) (the “Program Website”).

Section II.E “Financial Considerations for Applications” is amended by deleting the heading of the Section and replacing it with “Financial Considerations for Applications for Loan Guarantees under TELGP” and the first sentence thereof is amended by replacing the words “this Solicitation” appearing therein with the word “TELG P”.

Section II.F “Loan Guarantee Administration Framework” is amended by deleting the heading of the Section and replacing it with “Loan Guarantee Administration Framework for TELGP” and replacing the words “this Solicitation” appearing twice therein with the word “TELG P”.

Section IV.A “Summary of Application Evaluation Process” is amended by deleting the Section and replacing it with:

**A. Summary of Application Evaluation Process**

DOE will review each Part I submission to determine whether such submission meets the Project eligibility requirements provided in Section II. If deemed eligible and ready to proceed further into the application process, Applicants will be invited to submit a Part II application.

An invitation to submit a Part II Application is not an assurance that DOE will invite the Applicant to the due diligence and term sheet negotiation process.

LPO’s Part II evaluation will determine whether there is a Reasonable Prospect of Repayment (as defined in Attachment F) of the direct loan or the loan to be guaranteed by applying the factors set forth in such definition. If the LPO determines that there is a Reasonable Prospect of Repayment of the direct loan or the loan to be guaranteed, the LPO will then determine the level of due diligence required to enter and conduct negotiations on a term sheet.

For Applications for a guaranteed loan under TELGP, the level of due diligence required will be based on verification that the Applicant and other participating financial institutions (if any) have evaluated, and received credit approval for, the Guaranteed Obligation in accordance with their established internal credit policies and procedures for comparable senior debt transactions, as if the Guaranteed Obligation were not partially guaranteed and the receipt by DOE of due diligence memoranda and supporting documentation from the Applicant and such other participating financial institutions. Based on such factors, LPO will, in consultation with the Applicant, determine the scope and depth of any additional due diligence required, taking into account the Applicant’s and the Project Sponsor’s schedule and commercial objectives.

For Applications for a direct loan under TELP, LPO will conduct full due diligence with the assistance of its third-party advisors.

Section IV.C “Determination to Proceed to Term Sheet Negotiation” is amended by deleting the Section and replacing it with:

**C. Determination to Proceed to Term Sheet Negotiation**

After DOE has completed its evaluation of a Part II application, DOE may invite the Applicant to enter into negotiations on a term sheet. As described above, LPO may require additional due diligence review in order to enter and conduct negotiations on a term sheet. In negotiating a term sheet, LPO may, at its discretion, require modification of the terms and conditions of the term sheet or other agreements between the Borrower and the Applicant (for TELGP Applications), as well as agreements with other project or financing parties, to satisfy the LPO’s conditions for determining that there is a Reasonable Prospect of Repayment of the direct loan or the loan to be guaranteed and to protect the interests of the United States in the case of default. The negotiation of a term sheet does not provide any assurance that DOE will issue a conditional commitment or a direct loan or loan guarantee to support the Project.

If DOE reviews a submission and decides not to proceed, DOE will inform the Applicant in writing of the reason(s) for not moving forward. DOE's decision not to proceed with any Application shall be final and non-appealable, but will not prevent the Applicant from applying for a direct loan or loan guarantee pursuant to the terms of any other existing solicitation that is accepting Applications or applying for a direct loan or loan guarantee in respect of a different proposed project pursuant to another, separate application under this Solicitation.

DOE reserves the right, without qualification, to reject any or all Applications received in response to this Solicitation or select any Application for negotiation of a term sheet.

Section V.A "Third Party Expenses" is amended by deleting the final paragraph of the Section and replacing it with "For Applications for a loan guarantee under TELGP, the degree that LPO will utilize external consultants will vary depending on the size, complexity and risk factors of the Project and the proposed loan, the portion of the loan guaranteed by DOE, and the level of due diligence performed by the Applicant. LPO will endeavor to minimize requirements for external consultants and, at its discretion, keeping external advisor costs under TELGP to less than 1% of the loan request and not requiring non-legal consultants for projects with total project costs of less than \$25 million."

Section V.B "Maintenance Expenses" is amended by deleting the first sentence of the Section and replacing it with "Borrowers shall be responsible for paying the fees and expenses of DOE's Master Servicer, as described in Attachment F, or collateral agent."

Section V.C "Credit Subsidy Cost" is amended by deleting the Section and replacing it with:

**C. 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 direct loan or 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 Obligation or direct loan, as applicable. DOE will allocate appropriated funds to pay the Credit Subsidy Cost of a loan guarantee or direct loan, as applicable, at the time an Applicant accepts a conditional commitment, in each case subject to the availability of appropriated funds. No direct loan or loan guarantee shall be made unless an appropriation for the cost of the direct loan or loan guarantee has been made, the remaining amount of which is sufficient to cover the Credit Subsidy Cost. DOE makes no representation regarding the amount of any particular applicant's Credit Subsidy Cost or whether there will be sufficient appropriated funds to pay for such Credit Subsidy Cost.

Section VIII "Required Certification/Commitment" is amended by deleting the Section and replacing it with:

**VIII. Required Certification/Commitment**

The following certification must be included with each Part I and Part II Application:

[SAMPLE LETTER OF CERTIFICATION/COMMITMENT]

[DATE]

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

Dear Director:

This letter confirms the intent of [Name of Applicant] (the “Applicant”) to seek a [loan guarantee][direct loan] pursuant to the Amended and Restated Solicitation No. 89303018RLP000005 dated \_\_\_\_\_, 20\_\_ (as supplemented, the “**Solicitation**”).

This letter 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.

[For Part II submission only: “The Applicant attests that there is a reasonable prospect that the guaranteed portion of the [Guaranteed Obligation][direct loan] 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.”]

The undersigned acknowledges that neither it nor any of its affiliates may issue any press release or otherwise disclose the status of the Application or any communications with DOE without DOE’s prior written consent.

If we decide to withdraw from consideration for a [loan guarantee][direct loan] 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]  
[Title]  
[Company/Applicant]

Attachment A “PART I APPLICATION INSTRUCTIONS” is deleted and replaced with:

## **ATTACHMENT A – PART I APPLICATION INSTRUCTIONS**

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The purpose of the Part I Application is to provide sufficient information for DOE to determine the Project’s eligibility and readiness to proceed through the application process. While the Part I Application may be submitted at any time, LPO recommends that the Applicant engage in a pre-application consultation with LPO staff prior to submission.

Refer to Section VII.D of the Solicitation that sets forth the steps an Applicant must take in order to restrict the use and disclosure of certain data submitted in the Application.

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 G can be provided in detail as a narrative following the outline provided below or through the inclusion of supporting documentation or through a combination of both. Applicants should tailor their narrative responses based on their reasonable judgement of the Project characteristics and responsiveness to the information requested. Applications should avoid duplication of information and excessive detail to allow LPO to conduct an efficient evaluation of the Part I Application. A typical Part I Application should be no more than 25 pages. LPO will contact the Applicant if there are any questions or if additional information is required. Additional detail will be requested in the Part II Application.

Sections that are addressed through supporting documentation should include specific references by document name, section, and page to facilitate review of the Application. Submissions should be provided in PDF or Excel documents uploaded through the Application Portal.

### **I. Submission Requirements**

#### **A. Application Information (to be submitted on the Application Portal website)**

1. **Project Information:**
  - a) Project name
  - b) Project technology
  - c) Project/generation capacity (in Megawatts, Gallons per Year, Tons per Year, or Other)
2. **Project Location:** Street address, city, state, zip code for all Project locations.
3. **Borrower and Project Sponsor(s):** For the Borrower and each Project Sponsor, provide the 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:** Applicant entity name, website address, mailing address, city, state, postal code, SAM number, primary contact information including first name, last name, title/position, phone, and email.
5. **Preliminary Questions:** The Applicant is to answer the following questions. If the answer to any of these questions is “No” include an 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 Amended and Restated 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 or direct loan 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/Direct Loan Request:** Provide the information in the table that appears on the portal: requested period (years) of guarantee or direct loan (as applicable), total Project Costs, proposed guarantee amount or direct loan amount (as applicable), total 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.
  7. **Summary of Benefits to Tribe(s):** Provide a narrative summary of the benefits to the tribe(s) that will result from the Project. Applicants should include direct economic and energy justice goals and benefits to the tribe as well as potential secondary benefits. Terms can be preliminary and updated further in the Part II application.

## **B. Project Organization**

1. **Key Staff:** List the full names (including middle name or initial) of key staff of the Borrower and Project Sponsors to be involved with the Project and a one paragraph description of their professional biographies.
2. **Personnel Organizational Chart:** Provide a current personnel organizational chart for the Borrower and each Project Sponsor indicating key staff names and functions.
3. **Project Organizational Chart:** Provide a current or proposed Project organizational chart showing the Borrower relationship to each Project Sponsor, the Project, and to any subsidiaries or affiliates. Include the legal structure (e.g., corporation, partnership, or LLC) of each entity listed in the organizational chart. Include a short narrative description of the chart indicating the status and plans, if any, to create any entity.
4. **Evidence of Authority (TELP Only):** 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. Potential examples of authority include corporate resolutions, bylaws, or entity agreements

## **C. Lender/Applicant Organization (TELGP Only)**

1. **Key Staff:** List the full names (including middle name or initial) of key staff of the Applicant responsible for the proposed financing of the Project with one paragraph description of their professional biographies.
2. **Applicant Organizational Chart:** Provide a current Applicant personnel organizational chart indicating key staff names and functions.
3. **Lender Qualification:** The Applicant must submit the information as listed in Appendix F as evidence of its qualification as a Lead Lender under the TELGP program.
4. **Evidence of Authority:** Submit a secretary's certificate or other evidence that the signatory of the Application and related documents is duly authorized to execute and deliver documents for and in the name of the Applicant.



#### D. Project Description

1. **Executive Summary:** Provide a description of the nature and scope of the Project, including the technology, brief overview of business plan with a focus on the revenue model, brief overview of financing plan with a focus on sources and uses as well as plan for and current status of equity raise, site, environmental resources affected, purpose, size, capacity, design features, key metrics, and key milestones. Include target dates for:
  - a) financial close of the Loan Guarantee Agreement;
  - b) commencement of site preparation and construction;
  - c) commercial operation; and
  - d) marketing the output.
2. **Project Sponsors' Capabilities:** Describe the Borrower's and each Project Sponsor's prior experience as it relates to carrying out undertakings similar to the one being proposed, 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 the Borrower and each Project Sponsor.

#### E. Technical Information

1. **Description of Project Design:** Provide a technical description of the project, including key outputs, inputs and processes involved in the Project design.
2. **Description of Technology:** Provide a description of the technology to be used in the Project. Describe the commercial feasibility of the technology (or technologies) and how the Project intends to employ such technology(technologies).
3. **Diagrams:** Provide conceptual level diagrams with descriptions outlining general plant layout, process and materials flows, and operating parameters and throughputs for key processes. Include also any supporting photos, maps or drawings.
4. **Acquisition Strategies:** Provide a description of key raw material, equipment, and component supply chain acquisition strategies.
5. **Critical Path Agreements Status:** Provide a status for each critical path contract and agreement, 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. Use the table below; expand or modify as needed.

Agreement	Status	Comment
Front-End Engineering Design (FEED)		
Technology Licensing		
Teaming Agreement/		
Engineering, Procurement and Construction		
Long-Lead Equipment Contracts		
Feedstock Agreements		
Off-Take or Sales Contracts		

Status: 1. Not started, 2. Initiated, 3. Completed, 4. N/A (for items marked 1 or 2, please identify the estimated completion date in the “Comments” column).

6. **Planning Documents Status:** Provide a status of the construction plan, operation and maintenance plan, waste disposal plan, and preliminary risk management plan. Use the table below and expand or modify needed.

Document	Status	Comment
Construction Plan		
Operation and Maintenance Plan		
Waste Disposal Plan		
Risk Management Plan		

Status: 1. Not started, 2. Initiated, 3. Completed, 4. N/A (for items marked 1 or 2, please identify the estimated completion date in the “Comments” column).

**F. Financial Information (TELGP Only)**

1. **Term Sheet:** Provide a copy of any term sheet (binding or proposed) or other narrative that the Applicant has provided to the Borrower that describes the amount to be borrowed, tenor, interest rate, and other terms and conditions relevant to the Lender’s offer. In addition, describe any syndication, placement, distribution, and any other material aspects of funding the Guaranteed Obligation.

**G. Legal and Regulatory Information**

1. **Status and Timelines for Regulatory Approval:** Provide as a table the status and timelines for application and expected completion or receipt of all required federal, state, or local permits, approvals, or reviews, including as to environmental matters.
2. **Federal Support:** If the Project will benefit directly or indirectly from certain other forms of federal support, such as allowable federal income tax benefits; 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, provide a description of each such federal support. The Applicant should separately identify any previous Federal Support that the project or related technologies has received.
3. **Other Governmental Support:** If the Project relies on non-federal governmental (including state) incentives or other assistance, including grants, tax credits and other loan guarantees to support the financing, construction and operation of the Project, provide a description of each such non-federal support, including indicating whether any such incentives or assistance are subject to clawback and the circumstances under which a clawback could occur. The Applicant should separately identify any previous Other Governmental Support that the project or related technologies has received.

**H. Application Certifications**

1. **Lobbying, Debarment, and Related Certifications and Assurances:** In submitting an Application for a loan guarantee or direct loan under the Act, Lender/Applicants and Borrowers must provide certain certifications and assurances contained in the form entitled “Certifications for

Use with Applications for Department of Energy Loan Guarantees under the Tribal Energy Loan Guarantee Program” which form may be downloaded from the Program Website.<sup>4</sup>

2. **Letter of Certification/Commitment:** In order to be considered under this Solicitation, the Part I Application must include a letter of commitment signed by an authorized representative of the Applicant in the form provided above in Section VIII.

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<sup>4</sup> [CERTIFICATIONS FOR USE WITH APPLICATIONS FOR DEPARTMENT OF ENERGY LOAN GUARANTEES UNDER THE TRIBAL ENERGY LOAN GUARANTEE PROGRAM | Department of Energy](#)

Attachment B “PART II APPLICATION INSTRUCTIONS” is deleted and replaced with:

## ATTACHMENT B – PART II APPLICATION INSTRUCTIONS

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The Part II Application may be filed at any time after DOE provides an invitation to the Applicant. The Part II Application consists of the items summarized below and in Attachment A as well as other information that may be requested to facilitate DOE’s continued review.

Applicants should refer to Section VII.D of the Solicitation that sets forth the steps an Applicant must take in order to restrict the use and disclosure of certain data submitted in the Application.

The purpose of the Part II Application is to provide sufficient information for DOE to determine whether there is a “reasonable prospect of repayment” of the proposed direct loan or Guaranteed Obligation and if so, the level of due diligence required to enter and conduct negotiations on a term sheet. Information requested in Sections I and III is required in the format described. For Section II, the Applicant has the option to provide the required information for each Section II element by submitting existing documentation that is responsive to the information requested or to provide a narrative response or some combination for each element.

Applicants should tailor their narrative responses based on their reasonable judgement of the Project characteristics and responsiveness to the information requested. Applications should avoid duplication of information and excessive detail to allow LPO to conduct an efficient evaluation of the Part II Application. LPO will contact the Applicant if there are any questions or if additional information is required. It is expected that additional detail will be requested in due diligence and LPO will specify those requirements upon successful completion of the Part II review.

Outline sections that are addressed through supporting documentation should include specific references by document name, section, and page. Supporting documentation should be provided as PDF or Excel documents uploaded through the Application Portal.

At any time after delivery of a Part II submission, to the extent that there are any material changes in the information provided to DOE in such Part II submission, the Applicant must provide timely notification to DOE after becoming aware of any such change by requesting approval from DOE to update their Part II submission via the Application Portal.

### I. Project Summary

**A. Executive Summary:** Provide a description of the nature and scope of the Project, including the technology, business plan, site, environmental resources affected, purpose, size, capacity, design features, financing plan, status of major agreements, key metrics, and key milestones. Include target dates for:

1. financial close of the Loan Guarantee Agreement;
2. commencement of site preparation and construction;
3. commercial operation; and
4. marketing the output.

**B. Total Project Costs:** Provide an 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 described in Attachment F.

- C. Update Part I Information:** For information not covered in the Executive Summary above in I.A.1, update the information in the Part I submission by providing a description of all material changes, 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. Please note that changes to the Part I submission may impact DOE's determination of the Project's eligibility and readiness to proceed.

## **II. Project Description**

- A. Key Contracts and Agreements:** Provide key term sheets, contracts and agreements (whether draft or signed) relevant to the design, engineering, construction, startup commissioning, shakedown, operations and maintenance of the Project, and Project sales, including, as applicable:
1. EPC contract(s);
  2. Long-term contracts for materials, components and equipment to be used in the Project;
  3. Any leases, operating, or maintenance contracts;
  4. Sales, distribution or off-take contracts; and
  5. Any additional relevant contracts or commitments.

If copies of terms sheets, or draft or completed contracts and agreements are unavailable, provide a brief description of the planned contracts and agreements that includes counterparties and, as applicable, target cost and performance milestones, performance guarantees, performance bonds or other credit support, liquidated damages provisions, and equipment warranties to the extent defined, along with the expected date when documentation will be available.

### **B. Technical Information**

1. **Site Description:** Describe the Project site and rights-of-way, easements, and logistical considerations (e.g., roads, water, highway, and rail). Provide the status and milestones for site access and, as appropriate, purchase or lease terms, zoning approvals or operating restrictions. Provide a description of required improvements for the Project (e.g., utility access).
2. **Project Construction Plan:** Provide a description of each of the following:
  - a) Description of prior successful implementation of similar project plans for projects of this scale by the Borrower or Project Sponsors. Applicants that are not able to include examples of successful implementation of similar project plans for projects of this scale should provide a description of the prior and related experience that they believe are sufficient to demonstrate to DOE that the Borrower or Project Sponsors have the expertise that would be evidenced in examples of successful implementation of similar project plans for projects of this scale;
  - b) Description of each step of the proposed project processes;
  - c) Fully sourced or cited material and energy balance, including system simulation for processes, using industry standard software;
  - d) Unique equipment requirements;
  - e) Rights or licenses necessary to use processes proposed and acquisition status;
  - f) 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 schedule should identify any Project external

- dependencies such as regulatory approvals or scheduling (e.g., interconnection), land-use agreements, environmental permits, licenses, or site improvements (e.g., utility service).
- g) Project cost analysis including analysis based on minimum design specifications coupled to process flow diagrams and cost estimates.
  - h) Project management plan and use of tools, such as Gantt charts, Monte-Carlo and other variance analysis, resource-based scheduling or other methods to assess and track progress;
  - i) Staffing plans, including identification of costs and resources to design, engineer, and construct the Project;
  - j) Project risks and mitigation strategies, including risk related to construction cost and schedule, scale-up and commissioning, procurement, etc. and the potential Project impact and mitigation of such risks.
  - k) Contingency plans to address cost overruns and schedule slippage.
3. **Operating and Maintenance Plan:** Provide the following:
- a) The plan for plant operations, proposed providers, expected staffing requirements, anticipated parts inventory and acquisition plans, major maintenance schedules and procedures, estimated annual downtime and any performance guarantees and related liquidated damages provisions;
  - b) 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) and information concerning the management experience of each officer or key person associated with the Project;
  - c) Any plans for expanding capacity over initial operations and the Borrower's or Project Sponsor's experience with comparable ramp-ups.
4. **Decommissioning Plan:** Provide a 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.
5. **Engineer's Report:** Provide an independent engineer's report that includes a review, evaluation, analysis, and recommendations in the following areas:
- a) base technology readiness for deployment, including previous commercial or pre-commercial demonstration,
  - b) engineering and design approach;
  - c) integrated Project schedule, including the schedule for completion;
  - d) cost estimates and technical input to the financial model;
  - e) contractual requirements and arrangements;
  - f) proposed supply chain;
  - g) Project construction and operating risks, including mitigation activities and milestones;
  - h) direct labor requirements during construction and operation;
  - i) siting and permitting;
  - j) testing and commissioning;
  - k) operation and maintenance; and
  - l) decommissioning plan and costs.

### C. Legal and Regulatory Information

1. **Permits and Approvals:** Provide a list and status 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.
2. **Background and Legal Structure:**
  - a) Provide a current Project organizational chart, with any updates from the Part I submission, showing the Borrower's relationship to each Project Sponsor, the Project, and to any subsidiaries or affiliates. Include the legal structure (e.g., corporation, partnership, or LLC) of each entity listed in the organizational chart. Include a short narrative description of the chart indicating the status and plans, if any, to create any entity.
  - b) Include copies of the organizational documents of the Borrower, and each Project Sponsor (such as certificates of incorporation and bylaws) and copies of the good standing certificates for each such entity.
  - c) Provide copies of any legal opinions and other legal reports, analyses, and reviews related to the Project that have been delivered prior to the submission of any part of the Application.
3. **Litigation and/or Conflicts:** Disclose any current, threatened (in writing), or pending litigation involving the Borrower, a Project Sponsor, 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 Borrower's, or any Project Sponsor's reputation, financial position or ability to complete the Project.

### D. Business Plan

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

1. **Output:** Provide a description of the Project's output in terms of product or a service, and any unique features of its business model.
2. **Market Analysis:** If available, provide a market study/report for the Project's output from an independent consultant. If such study/report is unavailable, provide the following:
  - a) 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.
  - b) Describe the current and potential competitors for the Project's output.
  - c) Provide a description of any competitive advantages.
  - d) Provide an 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).
3. **Marketing and Sales Plan:**
  - a) For signed or draft contracts provided in II.A, provide an analysis of the creditworthiness of counterparties who are, or are expected to be, party to such agreements if not included in the independent market study/report.
  - b) To the extent that the Project's output is not contracted, provide, as appropriate, a plan and status to identify and capture customer sales opportunities, including geographic and segment

targeting, use of focus groups or other approach to determine customer preferences, market demonstrations and sampling plans, customer purchase qualification processes, use of sales and distribution channel partners or direct sales, and advertising, warranties and discounting related to the revenues to be generated;

- c) Provide, as appropriate, the plan for marketing and sales staffing, including communications, inside and outside sales, account management, and after-sales service.
4. **Feedstock Supply Plan:** If not covered separately in Section II.B.3, Operations and Maintenance Plan:
  - a) Provide the Project's forecast for feedstock (availability and costs) and sales capacity;
  - b) Provide an analysis of the market for the Project's feedstock, identifying any expected market supply risks or shortages;
  - c) Provide a description of the Project's plans for ensuring an adequate supply of key or unique materials, equipment, and components as needed for successful operation. Provide drafts or executed copies of all material supply contracts for the Project or other risk management strategy such as futures contracts; and
  - d) Provide an analysis of the creditworthiness of counterparties who are party to supply agreements if not included in the independent market study/report.
5. **Insurance Coverage:** Provide a 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.
6. **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.

## **E. Financial Plan**

1. **Financial Statements:** Provide unaudited financial statements for the Borrower or majority Project Sponsor for the three immediately preceding fiscal years (or since inception if the Borrower or majority Project Sponsor 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) Provide 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 broken down monthly through the Commercial Operating Date (COD) plus two (2) years and quarterly for the balance of the proposed tenor of the Guaranteed Obligation or direct loan (as applicable), plus two (2) years.
    - (ii) Include detailed linked income statements, balance sheets, cash flow statements, and waterfall statements, with the ability to vary Project debt levels.



- (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 and the Cargo Preference Act, as applicable.
  - (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 direct loan or 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 direct loan or Guaranteed Obligation.
3. **Financial Plan:** Provide a financial plan narrative for the Project, consistent with U.S. GAAP.
- a) List all proposed sources of expected equity and debt funding by provider, type, and aggregate amount, and, to the extent available, provide copies of all material agreements, whether entered into or proposed, relevant to the investment and financing of the Project and the financial closing checklists for each financing.
  - b) Describe uses, timing, and amount of expected equity and debt funding.
  - c) For each party associated with the Project, provide a 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. **Credit History:** Provide the credit history of the Project Sponsors, the Borrower, the off-taker(s), the feedstock supplier, if applicable, and the EPC contractor. Provide the full name of the entity, address, and date of organization.
5. **Collateral:** Provide a listing, description, and value of all assets associated, or to be associated, with the Project and any other assets that will serve as collateral for the Guaranteed Obligations or direct loan (as applicable), 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).

6. **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.
7. **Preliminary Credit Assessment:** In the case of TELGP, provide a preliminary private credit assessment from the Applicant or a financial institution or rating agency acceptable to DOE indicating the financial strength of the proposed project in the absence of a DOE loan guarantee. For projects under TELGP where the proposed loan guarantee amount exceeds \$200 million and for all projects under TELP, DOE may also require a separate independent credit assessment from a nationally recognized rating agency for the proposed project without a DOE loan guarantee.
8. **Credit Approval and Due Diligence Memoranda (TELG Only):** Submit documentary evidence that the Applicant and other participating financial institutions (if any) have evaluated, and received credit approval for, the Guaranteed Obligation in accordance with their established internal credit policies and procedures for comparable senior debt transactions, as if the Guaranteed Obligation were not partially guaranteed, together with copies of all due diligence memoranda and supporting due diligence documentation relating to the Project and the proposed financing.
9. **Other Financial Information:** Include any other information about the Borrower and any Project Sponsor that provides a comprehensive summary of the Borrower's or Project Sponsor's business and financial situation, including specific information relevant to analyzing historical cash flow on a secular, normalized basis.

### III. Certifications

- A. **Lobbying, Debarment, and Related Certifications and Assurances:** In submitting an Application under this Solicitation, Applicants must provide certain certifications and assurances contained in the form entitled "Certifications for Use with Applications for Department of Energy Loan Guarantees under the Tribal Energy Loan Guarantee Program" which form may be downloaded from the Program Website.<sup>5</sup>
- B. **Letter of Certification/Commitment:** In order to be considered under this Solicitation, the Part II Application must include a letter of commitment signed by an authorized representative of the Applicant in the form provided above in Section VIII. above.

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<sup>5</sup> [CERTIFICATIONS FOR USE WITH APPLICATIONS FOR DEPARTMENT OF ENERGY LOAN GUARANTEES UNDER THE TRIBAL ENERGY LOAN GUARANTEE PROGRAM | Department of Energy](#)

Attachment C “OTHER RELEVANT REGULATIONS” is deleted and replaced with:

## ATTACHMENT C – OTHER RELEVANT REGULATIONS

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### National Environment Policy Act (NEPA)

#### 1. Background

All applications for projects under this Solicitation are subject to review under the National Environmental Policy Act (NEPA). The NEPA review process begins once the Applicant has accepted LPO’s invitation into the continued due diligence phase following the Part II review. DOE evaluates the Project to determine the appropriate level of NEPA review required, unless a NEPA review is being or has been prepared for the Project by another federal agency. The Applicant, with DOE oversight, is responsible for providing all necessary analysis and documentation to comply with NEPA and the applicable implementing regulations in 40 CFR 1500-1508 and 10 CFR 1021. The NEPA review must be completed before a loan guarantee can be issued.

Additional information on the NEPA process for loan guarantee projects is available on the Program Website at:

<https://www.energy.gov/lpo/title-xvii/title-xvii-environmental-compliance>

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.

There are three possible levels of NEPA review 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). An EIS typically requires an 12-24 month processing time;
- b. Environmental Assessment (EA): For projects with the potential to significantly impact biological, physical, and socio-cultural resources. An EA typically requires 6-9 months to process; and
- c. Categorical Exclusion (CX): For projects that meet the conditions for excluding the requirement to prepare an EA or EIS because prior analysis of similar actions determined such actions will not have significant impacts (e.g., re-equipping and retooling within existing facilities). A CX typically requires less time to process than an EA.

Examples of projects normally requiring an EA or an EIS can be found in the DOE NEPA implementing regulations at 10 CFR 1021, Appendix 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.

#### 2. 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. For projects involving multiple sites, the data listed in Sections A-C below should be submitted for each site, as applicable. However, if a NEPA document has already been prepared by a Federal agency, and encompasses the full scope of the Project contained in the Application, that NEPA document may be submitted in lieu of the following information:

**a) Description of Project Facilities, Site, and Surrounding Area:** Describe and, as appropriate, identify and quantify:

1. A map showing the location of the Project site, and a site layout map showing the Project facilities and associated infrastructure;
2. Site address, and description of site control and ownership (under Federal, State, Tribal or local ownership);
3. Purpose of the Project facility and materials produced or services provided;
4. Description of new facilities to be constructed, any modifications of existing facilities, and any new infrastructure or facilities necessary for the construction or operation of the Project (e.g., access roads, laydown areas, off-site parking areas, railroad links, docks, water outfalls and intakes, pipelines, electrical transmission, waste treatment facilities, etc.);
5. Footprint of the new and modified facilities;
6. Adjacent land uses (e.g., industrial, commercial, agricultural, residential, recreational);
7. Areas with special designation both on the Project site and surrounding area, 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;
8. Extent of necessary ground disturbance for the Project (e.g., site clearing, fill and excavation);
9. Expected Project lifetime, including any planned expansion of initial Project at the proposed site and to other sites;
10. Existing transportation infrastructure (e.g. rail, waterways, roads) and utility infrastructure (e.g., electricity, natural gas, water, and wastewater) that would be utilized by the Project;
11. Ambient air quality; and
12. Near-by human populations and demographics (including minority and low-income and methods used for identifying those populations).

**b) Resource Consumption Rates and Effluent Emissions Streams and Impacts:**

1. Present an overall schematic process diagram that identifies all material inputs and outputs;
2. 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 emissions and discharges (e.g. air emissions, including carbon dioxide and criteria pollutants, wastewater effluents and other liquid waste streams; hazardous waste streams, and odors), including their rate and duration;
  - d. Onsite and offsite waste treatment and disposal; and
3. Identify a spectrum of scenarios that could result from process upsets, accidents, or human error.

4. Analysis of potential impacts to physical, biological, cultural, and socioeconomic resources from facility construction and operation, including any mitigating measure(s) to be used or considered to be used to reduce environmental impacts, or any adverse effects that cannot be avoided.
- c) **Status of other environmental and regulatory reviews:** 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, Tribal, regional, or local agency, identify the required reviews and permits and 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.
  3. Whether a Phase 1 Environmental Site Assessment has been completed, if so, summarize results.

### **Davis-Bacon Requirements**

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 TELGP or direct loan under TELP 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**”). Each Borrower will be required in the Loan Guarantee Agreement 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) applicable to the Project. Borrowers are advised that, in accordance with the Davis-Bacon Act and its implementing regulation at 29 CFR 1.6(g), the Davis-Bacon Act obligations described above for construction work financed in whole or in part with a TELGP loan guarantee or TELP direct loan 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 or direct loan has occurred. An exception to the requirement to comply prior to closing of the DOE loan guarantee or direct loan 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. Applicants should visit the DOL website at <http://www.dol.gov/whd/govcontracts/dbra.htm> and the Program Website for additional guidance regarding the Davis-Bacon Act and its related acts.

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

All Projects that receive a loan guarantee or direct loan under this Solicitation must comply with the Cargo Preference Act of 1954<sup>6</sup>, 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 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: <https://www.maritime.dot.gov/ports/cargo-preference/cargo-preference>. Questions on cargo preference may also be addressed by contacting 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).

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<sup>6</sup> 46 U.S.C. §55305.

Attachment D “BURDEN DISCLOSURE STATEMENT” is deleted and replaced with:

## **ATTACHMENT D - BURDEN DISCLOSURE STATEMENT**

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### **The OMB Control Number for this collection of information is 1910-5134.**

This data is being collected to support Applications for loan guarantees from the Department of Energy under Section 2602(c) of the Energy Policy Act of 1992, as amended. The data you supply will be used for the review of Applications for loan guarantees under such Act.

Public reporting hour burden for this collection of information is estimated to be 132.5 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 Office of the Chief Information Officer, Enterprise Policy Development & Implementation Office, IM-22, Paperwork Reduction Project OMB Control Number 1910-5134, U.S. Department of Energy, 1000 Independence Ave SW, Washington, DC, 20585-1290; and to the Office of Management and Budget, OIRA, Paperwork Reduction Project OMB Control Number 1910-5134, Washington, DC, 20503.

A three-year extension of the foregoing Office of Management and Budget (“OMB”) control number is pending with OMB. 87 Fed. Reg. 17077 (March 25, 2022) <https://www.federalregister.gov/documents/2022/03/04/2022-04595/agency-information-collection-extension> . Comments may be submitted as described above. While the extension is pending, LPO is authorized to, and is accepting and evaluating applications without interruption.

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. Applying for benefits under the Act is voluntary, but if you choose to apply, your application must contain the information described in this Solicitation.

Submission of this data is required to obtain a direct loan pursuant to the authority granted in the FY22 Appropriations Act or a guarantee of the repayment of principal and interest on loans relating to Projects that qualify for such guarantees under Section 2602(c) of the Energy Policy Act of 1992, as amended.

Attachment F “PROGRAMMATIC REQUIREMENTS” is deleted and replaced with:

## ATTACHMENT F – PROGRAMMATIC REQUIREMENTS

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### 1. Definitions

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 or direct loan;
- (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 (i) for any application submitted pursuant to Section I.A of this Solicitation, an Eligible Lender, or (ii) for any application submitted pursuant to Section I.B of this Solicitation, an Eligible Borrower.

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

Conditional Commitment means a Term Sheet offered by DOE and accepted by the offeree of the Term Sheet, all in accordance with Section 4 of this Attachment.

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” or “cost of a direct loan”, as applicable, in Section 502(5) of the Federal Credit Reform Act of 1990.

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

DOE means the United States Department of Energy.

Eligible Borrower has the meaning set forth in Section II.C. of the Solicitation.

Eligible Lender has the meaning set forth in Section II.D. and Attachment E of the Solicitation.

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

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 its designee or agent).

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 or an Eligible Borrower, as applicable, establishes the obligation of DOE to provide through the Federal Financing Bank a direct loan or 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.

Master Servicer means an entity engaged by DOE to supervise the loan administration and servicing by Administrative Agents with respect to their Guaranteed Obligations and such entity shall undertake such duties generally consisting of, but not limited to:

- (i) overseeing the credit administration practices of Administrative Agents to verify their compliance with standard industry best practice, and, if necessary, leading collection efforts as interim servicer;
- (ii) ensuring that Administrative Agent have instituted procedures for tracking and identifying Holders of Guaranteed Obligations in accordance with Loan Agreements;
- (iii) overseeing the Administrative Agents' obligations to undertake those actions necessary to perfect and maintain liens, as applicable, on assets which are pledged as collateral for the Guaranteed Obligations; and
- (iv) verifying payment to Holders, of principal and interest on Guaranteed Obligations and, to DOE, of certain fees as described more fully in Section 9 of this Attachment.

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 Section 8 of this Attachment. Project Costs do not include costs for the items set forth in Section 8(b) of this Attachment.

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. For the purposes of this definition, a Project Sponsor can include the Borrower.

Reasonable Prospect of Repayment means that, as determined by the Secretary, the Borrower has a reasonable prospect of repaying the direct loan or Guaranteed Obligation, as applicable, and all of its other debt obligations for the Eligible Project, based on a comprehensive evaluation of, as applicable:

- (i) the strength of the contractual terms of the Eligible Project (if commercially reasonably available);
- (ii) the forecast of noncontractual cash flows supported by market projections from reputable sources, as determined by the Secretary;
- (iii) cash sweeps and other structure enhancements;
- (iv) the projected financial strength of the Eligible Borrower
  - (I) at the time of loan close; and
  - (II) throughout the loan term after the Eligible Project is completed;
- (v) the financial strength of the investors and strategic partners of the Eligible Borrower, if applicable; and
- (vi) other financial metrics and analyses that are relied on by the private lending community and nationally recognized credit rating agencies, as determined appropriate by the Secretary.

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

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

Term Sheet means a written offer for the provision of a direct loan or 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.



## **2. Applications**

- a) During the Application evaluation process, DOE may request additional information with respect to the proposed project.
- b) 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.
- c) 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, 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.

## **3. 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 F. Applications will be denied if:
  - (1) The proposed project is not an Eligible Project;
  - (2) The Person proposed to issue the loan or purchase other debt obligations constituting the Guaranteed Obligations is not an Eligible Lender;
  - (3) The Person proposed to be the obligor on the Guaranteed Obligations or direct loan is not an Eligible Borrower;
  - (4) Adequate equity for the proposed project will not be provided by the date of provision of the direct loan or issuance of the Guaranteed Obligations, or such later time as DOE in its discretion may determine; or
  - (5) The proposed project does not present a Reasonable Prospect of Repayment.
- b) A determination by DOE not to proceed with a proposed project following evaluation shall be final and non-appealable, but shall not prejudice the Applicant or other affected Persons from applying in respect of a different proposed project pursuant to another, separate Application under this or other open solicitations.

## **4. 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 acceptable to DOE. DOE's negotiation of a Term Sheet imposes no obligation on the Secretary to offer a Term Sheet to the Applicant.
- b) 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 Section 9 of this Attachment 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.
- c) 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. 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.

**5. 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) OMB has reviewed and approved DOE's calculation of the Credit Subsidy Cost;
  - (3) The Department of the Treasury has been consulted as to the financial terms and conditions of the Loan Guarantee Agreement;
  - (4) The Loan Guarantee Agreement and related documents contain all terms and conditions DOE deems reasonable and necessary to protect the interests of the United States;
  - (5) Each holder of the Guaranteed Obligations is an Eligible Lender, and the servicer of the Guaranteed Obligations meets the servicing performance requirements of Section 7 of this Attachment; and
  - (6) 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 her or his discretion, set a new closing date, or terminate the Conditional Commitment.

**6. 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 or provide through the Federal Financing Bank a direct loan.
- b) DOE is not bound by oral representations.
- c) Each Loan Guarantee Agreement (or related agreements) 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 Borrower shall be obligated to make full repayment of the principal and interest on the direct loan or Guaranteed Obligations (as applicable) 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.
  - (2) The loan guarantee does not finance, either directly or indirectly tax-exempt debt obligations, consistent with the requirements of section 149(b) of the Internal Revenue Code;
  - (3) The principal amount of the direct loan or Guaranteed Obligations (as applicable), when combined with funds from other sources committed and available to the Borrower, shall be sufficient to pay for expected Project Costs (including a dequate contingency amounts), the applicable items specified in Section 8(b) of this Attachment, and otherwise to carry out the Eligible Project;
  - (4) There shall be a Reasonable Prospect of Repayment by the Borrower of the principal of and interest on the direct loan or Guaranteed Obligations (as applicable) and all of its other debt obligations;
  - (5) The Borrower shall pledge collateral or surety determined by DOE to be necessary to secure the repayment of the direct loan or Guaranteed Obligations (as applicable). Such collateral or security may include Eligible Project assets and assets not related to the Eligible Project;
  - (6) 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;
- (7) The direct loan or Guaranteed Obligations (as applicable), including any reorganization, restructuring, or termination thereof, shall not at any time be subordinate to other financing;
  - (8) 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;
  - (9) The direct loan or Guaranteed Obligations (as applicable) shall bear interest at a rate that does not exceed a level that the Secretary determines appropriate, taking into account the prevailing rate of interest in the private sector for similar loans and risks;
  - (10) 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 direct loan or Guaranteed Obligations (as applicable);
  - (11) DOE or its representatives shall have access to the offices of the Borrower, any Eligible Lender, and the Eligible Project site at all reasonable times to satisfy audit requirements imposed on DOE by 42 U.S.C. 16512(i) or otherwise;
  - (12) 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;
  - (13) 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;
  - (14) The Borrower shall have no delinquent Federal debt;
  - (15) 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 Loan Guarantee Agreement;
  - (16) In the event of a default by the Borrower<sup>7</sup>:
    - (i) Interest on the direct loan or Guaranteed Obligations (as applicable) shall accrue at the rate stated in the Loan Guarantee Agreement or the Loan Agreement, until DOE makes full payment of the defaulted direct loan or Guaranteed Obligations (as applicable) and DOE shall not be required to pay any premium, default penalties, or prepayment penalties; and
    - (ii) The holder of collateral pledged in respect of the direct loan or Guaranteed Obligations (as applicable) 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.
  - (17) The Guaranteed Obligations or direct loan (as applicable) shall not exceed an amount equal to 80 percent of the Project Costs as estimated at the time at which the Guaranteed Obligations or direct loan (as applicable) is issued.
  - (18) An Eligible Lender or other Holder may sell, assign or transfer a Guaranteed Obligation to another Eligible Lender that meets the requirements of this Solicitation. 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.
  - (19) 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

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<sup>7</sup> For the avoidance of doubt, the provisions of 42 USC 16512(g) and 10 CFR Sections 609.13 and 609.14 will apply in the case of default.

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.

- (20) 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.
- (21) 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.
- (22) The Loan Guarantee Agreement and related agreements shall include, without limitation, such other terms and conditions as DOE deems necessary or appropriate to protect the interests of the United States, including, without limitation, terms and conditions that are usual and customary for financings of this kind by U.S. Government or other public lending institutions or otherwise deemed appropriate by DOE after the completion of its due diligence review and underwriting and credit analysis of the project and proposed financing.

#### **7. Lender servicing requirements (for TELGP).**

- 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 the Lead Lender in its capacity as Administrative Agent. 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.
- c) Even though DOE may rely on the Administrative Agents to service and monitor the Guaranteed Obligations, DOE may also conduct its own independent monitoring and review of the Eligible Projects, including periodic detailed examination of individual loans and their financial and operational aspects as they are serviced and represented to DOE by Administrative Agents. Once LPO closes a loan guarantee, projects are monitored and evaluated throughout project development, construction, commissioning, and operation until the loan has been repaid in full, protecting taxpayer interests. LPO will monitor the borrowers and the Administrative Agents according to the conditions and requirements specified in the loan documents. Each Loan Agreement will specify DOE's voting and control rights, including rights to approve amendments and waivers and, in the case of default, rights to accelerate the Guaranteed Obligation and exercise remedies. Each Loan Agreement will also specify reporting requirements, which may include audited financial statements, updated budget and cashflow projections, audit reports, sources and uses of funds, coverage ratios, project schedules, operating statistics, and management updates. LPO's oversight and monitoring may also include periodic status meetings with the borrowers, reviews by the independent engineers (if applicable) and/or other relevant reports, and site visits.
- d) DOE will appoint a Master Servicer with respect to the oversight of the loan administration and servicing of Guaranteed Obligations by the Administrative Agents, and the loan documents will contain such requirements and terms relating to the Master Servicer as deemed necessary or appropriate by DOE.

## **8. 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 paragraph (a)(5) of this section, 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 paragraph (b) of this section, 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 the direct loan or Guaranteed Obligations (as applicable) deposited to any reserve fund shall not be removed from such fund except to pay Project Costs, to pay principal of the direct loan or Guaranteed Obligations (as applicable), 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 of the facility, or, in DOE's discretion, any portion of the facility that has completed startup, commissioning, and shakedown;
- (8) the Administrative Cost of Issuing a Loan Guarantee and any other fee collected by DOE; and
- (9) Operating costs.

## 9. Fees and charges.

- a) 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 direct loan or Guaranteed Obligations (as applicable) 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 Loan Guarantee Agreement is executed and delivered. The amount of the Risk-Based Charge will be specified in the Loan Guarantee Agreement.
- b) 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 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 (c) and (d) of this section.
- c) 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 and directly to the independent consultants and outside legal counsel and which shall not constitute administrative expenses of DOE. Appropriate provisions regarding payment of such fees and expenses shall also be included in each Term Sheet and Loan Guarantee Agreement or, upon a determination by DOE, in other appropriate agreements.
- d) 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.
- e) 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.
- f) With respect to any loan guarantee issued pursuant to this 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. 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 to be entered into at closing between the Borrower and the Master Servicer. In addition, 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.
- g) With respect to any direct loans provided pursuant to this Solicitation, Borrowers shall be responsible under all circumstances for paying the fees and expenses of DOE's collateral agent that are incurred in connection with their specific projects, without recourse to DOE by any party, pursuant to an agreement satisfactory to DOE.

Attachment G “ELIGIBILITY REFERENCE” is amended by deleting the first sentence of the introductory paragraph and replacing it with “The following chart summarizes the eligibility of projects under certain ownership structures, with reference to both the ownership of the entity acting as the Borrower under the guaranteed loan and the ownership of the project to be financed under the direct loan or guaranteed loan.”

Attachment H “REFERENCES” is amended by adding “9. The Consolidated Appropriations Act, 2022, Public Law No. 117-103” at the end.