

[6450-01-P]

DEPARTMENT OF ENERGY

Notice of Intent and Request for Information regarding establishment of a Transmission Facilitation Program

AGENCY: Grid Deployment Office, Department of Energy.

ACTION: Notice of intent (NOI); request for information (RFI).

SUMMARY: The Infrastructure Investment and Jobs Act (IIJA or the Act) directs the Secretary of Energy (Secretary) to establish a program, to be known as the “Transmission Facilitation Program” or “TFP,” under which the Secretary shall facilitate the construction of electric power transmission lines and related facilities. The U.S. Department of Energy (DOE or Department) Grid Deployment Office is issuing this NOI to notify interested parties of its intent to implement the TFP and to describe the proposed approach for participation by eligible entities in the TFP. The Department also seeks input from all stakeholders through this RFI regarding the application process, criteria for qualification, and selection of eligible projects to participate in the TFP.

DATES: Written comments and information are requested on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

ADDRESSES: Interested parties may submit comments by any of the following methods: Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments. Instructions: All submissions received must include the agency name and identifier.

FOR FURTHER INFORMATION CONTACT: Requests for additional information may be sent to: TransmissionFacilitation@hq.doe.gov. Questions about the NOI and RFI may be addressed to Carrie Cobb at (202) 586-1411.

SUPPLEMENTARY INFORMATION:

I. Background

On November 15, 2021, President Joseph R. Biden, Jr. signed the Infrastructure Investment and Jobs Act (IIJA, also known as the Bipartisan Infrastructure Law (BIL)). The BIL is a once-in-a-generation investment in infrastructure, which provides the backbone for a more sustainable, resilient, and equitable economy through enhancing U.S. competitiveness in the world, diversifying regional economies to include supply chain and manufacturing industries, creating good union jobs, and ensuring stronger access to economic and other benefits for underserved communities. The BIL appropriates more than \$62 billion to DOE to ensure the clean energy future delivers true economic prosperity to the American people. Principles of equity and justice will guide BIL implementation, including the implementation of the TFP, consistent with the Biden Administration's commitments to ensure that overburdened, underserved, and underrepresented individuals and communities have access to federal resources.¹

As part of the BIL implementation, DOE is authorized to borrow from the Treasury, without further appropriation and without fiscal year limitation, up to \$2.5 billion in outstanding repayable balances at any one time for the purpose of carrying out the TFP. The expansion of transmission infrastructure facilitated by the TFP lays the groundwork for increasing the availability of lower cost and low carbon electricity sources. This will support the Biden

¹ See EO 13985, Advancing Racial Equity and Support for Underserved Communities; EO 14020, Establishment of the White House Gender Policy Council; and EO 14008, Tackling the Climate Crisis at Home and Abroad.

Administration’s goal to achieve a carbon-free electric grid by 2035 and a net zero emissions economy by 2050.² In addition, the BIL directs that DOE support strong and equitable economic growth,³ enhanced transmission system reliability and resilience, increased interregional transfers and the use of technology that enhances transmission system capacity, efficiency, resilience, or reliability.

Amounts borrowed by DOE, together with all amounts received by DOE as receipts, collections, and recoveries relating to the eligible projects supported under the TFP (including, for example, capacity contract marketing receipts, loan repayments, and eligible entity contributions under a public-private partnership) and any amounts appropriated for the program, will be placed in the “Transmission Facilitation Fund” for the purpose of carrying out the TFP. The TFP offers three forms of facilitation to assist eligible with the construction of new, replacement, and upgraded high-capacity transmission lines.: capacity contracts, loans, and public-private partnerships. The IJA directs the Secretary of Energy to prioritize projects that, to the maximum extent possible, improve resilience and reliability of the grid; facilitate inter-regional transfer of electricity; lower electric sector greenhouse gas emissions; and use technology that enhances the capacity, efficiency, resilience, or reliability of the transmission system. The TFP must judiciously use the tools included in the statute to support projects that both meet the statute’s articulated goals

² FACT SHEET: President Biden sets 2030 Greenhouse Gas Pollution Reduction Target Aimed at Creating Good-paying Union Jobs and Securing U.S. Leadership on Clean Energy Technologies, <https://www.whitehouse.gov/briefing-room/statements-releases/2021/04/22/fact-sheet-president-biden-sets-2030-greenhouse-gas-pollution-reduction-target-aimed-at-creating-good-paying-union-jobs-and-securing-u-s-leadership-on-clean-energy-technologies/>

³ Strengthening prosperity – by expanding good, safe union jobs and supporting job growth through investments in domestic manufacturing – is a key goal set by President Biden and is discussed in depth in his Executive Orders (EOs) on Ensuring the Future Is Made in All of America by All of America's Workers (EO 14005), Tackling the Climate Crisis at Home and Abroad (EO 14008), Worker Organizing and Empowerment (EO 14025), and Promoting Competition in the American Economy (EO 14036).

and provide a reasonable expectation that the costs of capacity contracts, loans, or public-private partnerships borne by the Federal Government will be repaid.

Community engagement will be central to the successful implementation of all phases of the TFP. Projects funded through the BIL provisions will include Equity, Environmental and Energy Justice principles and priorities. Equity requires the consideration of existing barriers underserved and underrepresented individuals and communities face when accessing Federal resources. Environmental and energy justice principles include procedural justice, distributive justice, recognition justice, and restorative justice. In keeping with the administration's goals, and as an agency whose mission includes strengthening our country's energy prosperity, DOE intends to use this program to support the creation of good-paying jobs with the free and fair choice to join a union, the incorporation of strong labor standards, and high-road workforce development, especially registered apprenticeship and quality pre-apprenticeship. This program will also support the Justice40 Initiative, which aims to provide 40 percent of the overall benefits of certain Federal investments to Disadvantaged Communities.

II. Purpose of NOI and RFI

DOE is seeking opportunities that optimize the use of the available TFP funds to accelerate the deployment of transmission facilities that will best serve the national interest. The NOI describes DOE's proposed approach to soliciting applications for TFP facilitation, identifying information that applicants would provide in an application, and describing the criteria that will be used to evaluate applications. The RFI includes questions based on DOE's proposed approach, as well as other matters relevant to the implementation and administration of the TFP.

The NOI and RFI seek information on TFP implementation. Responses to the NOI and RFI should not include applications or requests for facilitation of any transmission projects. Applications will be accepted after DOE issues an initial solicitation for proposals seeking TFP support.

III. Summary of TFP Features

A. Key Definitions. The TFP was established in the IJA to authorize the Secretary to “facilitate the construction of electric power transmission lines and related facilities,”⁴ using tools delineated in the statute. The IJA language establishing the TFP defined four terms that are central to describing the program, and those are reproduced here:

- “Eligible electric power transmission line” means an electric power transmission line that is capable of transmitting not less than (a) 1,000 megawatts (MW); or (b) in the case of a project that consists of upgrading an existing transmission line or constructing a new transmission line in an existing transmission, transportation, or telecommunications infrastructure corridor, 500 MW.
- “Eligible entity” means an entity seeking to carry out an eligible project.
- “Eligible project” means a project (including any related facility) (a) to construct a new or replace an existing eligible electric power transmission line; (b) to increase the transmission capacity of an existing eligible electric power transmission line; or (c) to connect an isolated microgrid to an existing transmission, transportation, or telecommunications infrastructure corridor located in Alaska, Hawaii, or a territory of the United States.

⁴ IJA Sec. 40106(b).

- “Capacity contract” means a contract entered into by the Secretary and an eligible entity for the right to the use of the transmission capacity of an eligible project.

B. Three Tools Available to DOE. Under the TFP, DOE can offer three types of support to facilitate construction of eligible projects. These tools are:

1. Capacity Contracts. DOE is authorized to purchase the right to use transmission capacity of up to 50 percent of the total proposed transmission capacity of the transmission line from an eligible project for a term of not more than 40 years.⁵ DOE participation is to help provide certainty to developers, operators, and marketers that customer revenue will be sufficient to justify the construction of a transmission line that meets current and future needs. Applications for capacity contracts are not required to account for National Environmental Policy Act (NEPA) environmental impact review, because DOE’s entry into a capacity contract does not independently trigger NEPA review.⁶ DOE may terminate the capacity contract as soon as practicable after determining that there is sufficient subscription to the new project to ensure the project’s long-term financial viability.⁷ DOE may transfer contractual rights to transmission capacity to a third party upon payment by the third party.⁸ DOE may also relinquish contractual rights back to the developer of the project, upon payment to DOE for those rights by the developer.⁹ If DOE has not terminated or transferred the capacity before the eligible project enters service, DOE is required to market the transmission capacity of the project to which it holds rights under a

⁵ IIJA Section 40106(f)(3).

⁶ IIJA Section 40106(f)(7).

⁷ IIJA Section 40106(f)(5).

⁸ IIJA Section 40106(f)(5)(B).

⁹ IIJA Section 40106(f)(5)(C)-(D).

capacity contract. DOE is also required to seek to ensure that any power marketing contract maximizes the financial return to the Federal Government.

2. Loans. DOE is authorized to make loans to eligible entities for the costs of carrying out an eligible project.¹⁰ The interest rate on a TFP loan shall be fixed by DOE, taking into consideration market yields on outstanding marketable obligations of the United States of comparable maturities as of the date of the loan.¹¹ To the extent consistent with the underlying purposes and scope of the TFP, DOE anticipates that the TFP loan process will be similar to the process for evaluating DOE loans and loan guarantees offered by the Loan Programs Office (LPO) or federal Power Marketing Administrations. For example, loans issued by LPO are subject to a thorough and formal due diligence process before DOE offers conditional commitment to borrowers. Applicants should expect a similar process before a final loan commitment will be made by DOE for any request for TFP facilitation.

3. Public-Private Partnerships. DOE is authorized to undertake public-private partnerships under which DOE will participate with an eligible entity in designing, developing, constructing, operating, maintaining, or owning an eligible project. Among other requirements, a public-private partnership eligible project may be located in an area designated as a national interest electric transmission corridor pursuant to section 216(a) of the Federal Power Act, 16 U.S.C. 824p(a) (NIETC), or the eligible project must be necessary to accommodate an actual or projected increase in demand for electric transmission capacity across more than one State or transmission planning region.¹² DOE anticipates that TFP public-private partnerships will be similar in structure and process to, and may confer similar benefits to, transmission projects undertaken pursuant to

¹⁰ IIJA Section 40106(e)(1)(B).

¹¹ IIJA Section 40106(g).

¹² IIJA Section 40106(h).

Section 1222 of the Energy Policy Act of 2005 (42 U.S.C. 16421), except that DOE has funding available under the TFP to invest in an eligible project.

IV. Proposed Approach

The IIIA directs the Secretary to establish procedures for the solicitation and review of applications from eligible entities. DOE proposes the following solicitation process and key application requirements and application evaluation considerations.

A. Proposed TFP Solicitation Process

The DOE proposes to conduct an initial solicitation for eligible projects seeking capacity contracts, as detailed herein. In subsequent solicitations, DOE will conduct additional solicitations applicable to some or all of the three facilitation mechanisms available under the TFP (capacity contract, loan, public-private partnership). At present, DOE plans to conduct a TFP solicitation at least annually, assuming funds are available. The annual solicitation process may be focused on one or all of the TFP mechanisms, depending on market needs and available funding.

1. Initial Solicitation: The first solicitation will be limited to applicants seeking capacity contracts for eligible projects that will commence commercial operation no later than December 31, 2027, if DOE authorizes a capacity contract. The timing of DOE's determination on a request for support will be based on the time necessary to conduct due diligence on the proposed project, to negotiate with the sponsor, to consult with affected stakeholders, including regional transmission planning regions, and to finalize the definitive legal documents that will govern each transaction. If an applicant is found to be eligible and its project meets the selection criteria, but it is not selected in the first round of TFP capacity contracts, the applicant is welcome to submit another application when DOE issues subsequent solicitations.

DOE expects its first solicitation will be issued in 2022 and a second solicitation will be issued in early 2023. In the second solicitation, DOE currently anticipates it will invite applications for all the forms of support available from the TFP: capacity contracts, loans, public-private partnerships, as well as support for connecting microgrids in Alaska, Hawaii, or a U.S. Territory. As with the initial solicitation, the timing of DOE's determination on a request for support in subsequent solicitations will include the time necessary to conduct due diligence on the proposed project and to finalize definitive legal documents governing the transaction. Following the second solicitation, the types and amounts of TFP support offered in 2024 and beyond will be identified in the solicitation documentation.

In the following sections, DOE states its expectations for the first solicitation, that is, the solicitation for eligible projects seeking capacity contracts for eligible projects that could be in commercial operation by December 31, 2027.

2. Solicitation Announcement. Following review and consideration of comments received in response to the RFI issued herewith, DOE proposes to issue a solicitation announcement seeking applications for eligible projects. The solicitation announcement will include detailed requirements for applications, and an application form to be submitted to DOE. Applicants should expect the information requested to include the items identified in this NOI. The solicitation announcement may identify paths or regions that DOE prefers for the location of eligible projects that promote the goals of the TFP, including to promote grid flexibility, increase reliability and resilience, and connect communities to greater opportunity for lower-cost, lower-carbon electric generation resources.

3. Timeline. The solicitation announcement will include a deadline for applications and will provide a timeline for DOE's selection process. The solicitation will include guidance

regarding DOE's expectations for its review of applications, for selection of projects for negotiation of capacity contracts, for the due diligence process, and for the execution of capacity contracts.

B. TFP Eligibility Determination

The IIJA includes specific, objective eligibility requirements for participation in the TFP. If DOE determines that an application fails to demonstrate the proposed project is eligible for TFP support, DOE may provide a written notice of that decision to the applicant. If a proposed project is determined by DOE to be ineligible, the application supporting it will not be considered further by DOE (unless supplemented with information demonstrating, to DOE's satisfaction, that the project meets the eligibility criteria).

To demonstrate eligibility, the entity seeking to carry out the project must certify at least one of the following regarding the proposed project:

- If the project proposes construction of a new transmission line that is not in an existing transmission, transportation, or telecommunications corridor, the new transmission line will be capable of transmitting not less than 1,000 megawatts.
- If the project proposes upgrading an existing transmission line or constructing a new transmission line in an existing transmission, transportation, or telecommunications corridor, the transmission line will be capable of transmitting not less than 500 megawatts.
- If replacing an existing line, the existing line being replaced will be one that would be eligible for TFP (transmits not less than 1,000 megawatts if not in an existing corridor, or not less than 500 megawatts if in an existing corridor).

- The proposed project will increase the transmission capacity of an existing line that would be eligible for TFP (the existing line must transmit no less than 500 megawatts).
- Rather than, or in addition to, demonstrating compliance with the factors identified above, the project will connect an isolated microgrid to an existing transmission, transportation, or telecommunications infrastructure corridor located in Alaska, Hawaii, or a territory of the United States.

The applicant must also certify that the proposed transmission line project does not include related facilities used primarily to generate electric energy or used in the local distribution of electric energy.

If DOE determines that information submitted in the application establishes that the proposed project is an eligible project, then the application will be reviewed to determine if it meets the standards necessary for the Secretary to certify that the proposed project may receive TFP facilitation.

C. Selection and Execution

As a condition to facilitation of an eligible project using any of the tools available in the TFP, DOE must certify that: (a) the eligible project is in the public interest; (b) the eligible project is unlikely to be constructed in a timely manner or with as much transmission capacity in the absence of facilitation provided from the TFP; and (c) there is a reasonable expectation that the proceeds from the eligible project will be adequate to recover the cost of DOE's facilitation activities for the eligible project. In evaluating projects for possible solicitation, DOE will prioritize projects that advance the TFP's statutory objectives.¹³ DOE proposes to make such

¹³ See Section 40106(j)(8).

determinations based on the application materials submitted for a project, consultation with DOE and outside experts and stakeholders, and any financial or technical due diligence needed by DOE. Applicants must provide information on the following issues to support DOE's certification of their project for TFP facilitation.

- 1. The applicant must demonstrate that the eligible project is unlikely to be constructed in as timely a manner or with as much transmission capacity in the absence of TFP facilitation.**

To assess whether an eligible project is unlikely to be constructed in as timely a manner or with as much transmission capacity in the absence of TFP facilitation, DOE will request applicants provide information including:

- A status report on the proposed project, and the nature of the challenges the project sponsor currently faces that prevent or hinder construction of the project.
- An explanation of why the proposed project is unlikely to be built, or unlikely to be built with as much transmission capacity, absent the TFP support.
- A description of how the applicant believes TFP support would mitigate or eliminate the barriers to successful construction of the proposed project.

- 2. The applicant must demonstrate that its proposed project has a realistic chance of being constructed and going into commercial operation if DOE approves TFP assistance.**

An applicant must demonstrate that its proposed project has a realistic chance of being constructed and going into commercial operation if DOE approves TFP assistance. DOE expects

that projects further along in the development process will be more effectively assisted by the tools available under the TFP.

The information DOE expects to request will address the regulatory, financial, commercial, and affected community issues that are key to the success of large transmission projects. Applicants must provide a thorough explanation of their project, detailed information regarding necessary regulatory approvals, financial data, and modeling sufficient to enable DOE to assess the prospects of cost recovery or repayment to DOE of TFP support from the proceeds of the project.

DOE proposes to seek the following information to determine the readiness of the proposed project, including but not limited to:

- A detailed description of the proposed project, including the transmission facilities and related facilities, the proposed route, the equipment that will be used to construct the line, its anticipated capacity and line ratings, points of interconnection, unidirectional or bidirectional capabilities, cybersecurity plan, and the proposed schedule for completing construction and interconnection of the project.
- The status of the Federal, Tribal, State, and local permits, approvals, and other legal authority necessary to construct, own, and operate the transmission line as proposed and the project sponsor's schedule for obtaining all necessary permits and approvals.
- Identification of the rights-of-way, easements, or other land use arrangements necessary for construction of the proposed project that the project sponsor has in place, and what land use arrangements remain to be completed to successfully undertake construction and operation of the proposed project. Applicants should detail the community and stakeholder

outreach they have undertaken, and plan to undertake in the future, to inform those along the route of the proposed project of its potential impacts on their communities. The description of community and stakeholder engagement should include concerns raised, issues resolved in writing, and issues outstanding.

- A schedule showing the length of time the project will take from the date of its application, and from its notice to proceed with construction, to commercial operation of the line. The timeline should include key milestones and required permits or regulatory approvals that could accelerate or delay completion of the proposed project.
- Evidence demonstrating that the proposed project is consistent with regional transmission plans and priorities.
- An estimate of the time required to complete grid interconnection(s) necessary to successfully operate the proposed project, including the length of time the project expects to be in any interconnection queues.
- The scope of the generation resources available or expected to be available and their competitive status relative to other resources able to meet the same goals and needs.
- The number and estimated financial value of firm commitments from transmission customers for the electric power to be transmitted by the proposed project. The applicant should detail the steps it has taken and plans to take to market the unsold transmission capacity on the proposed project.
- Detailed information about: (a) the project sponsor's experience in planning and completing transmission projects; and (b) the management team that will be responsible for construction and operation of the line.

- The identification of the equity investors in the project and the amounts invested to date, and the amount of, or prospects for, debt instruments to finance construction of the project. This information should include evidence of the financial strength of the equity and debt participants in the project.
- The identification of companies or other entities that the project sponsor expects to: (a) own, operate, and maintain the project’s transmission lines and related facilities once commercial operations are underway; and (b) be engaged to market the power to be transmitted by the line.
- The status of the vendor contracts necessary to complete the construction of the project. This information should include planned or executed contracts for Engineering, Procurement, and Construction (EPC) services and project management.
- A description of engagement with the relevant construction trade unions and the status of negotiations on Project Labor Agreements¹⁴ that address skill certifications, use of registered apprentices, dispute resolution, project stabilization, and other conditions.
- A certification that the planning, construction, and operation of the line will comply with federal “Made In America” laws,¹⁵ including the Build America, Buy America Act.¹⁶

¹⁴ “Project labor agreement” means a pre-hire collective bargaining agreement with one or more labor organizations that establishes the terms and conditions of employment for a specific construction project and is an agreement described in 29 U.S.C. 158(f).

¹⁵ “Made in America Laws” means all statutes, regulations, rules, and Executive Orders relating to Federal financial assistance awards or Federal procurement, including those that refer to “Buy America” or “Buy American,” that require, or provide a preference for, the purchase or acquisition of goods, products, or materials produced in the United States, including iron, steel, and manufactured products offered in the United States. Made in America Laws include laws requiring domestic preference for maritime transport, including the Merchant Marine Act of 1920 (Pub. L. No. 66-261), also known as the Jones Act. Exec. Order No. 14,005, 86 Fed. Reg. 7475, § 2(b) (Jan. 28, 2021), *available at* <https://www.federalregister.gov/documents/2021/01/28/2021-02038/ensuring-the-future-is-made-in-all-of-america-by-all-of-americas-workers>. Made in America Laws also include laws that give preference to Indian-owned and -controlled businesses, such as the Buy Indian Act (25 U.S.C. 47), that produce items in the United States.

¹⁶ Pub. L. No. 117-58, §§ 70901-52.

3. The applicant must demonstrate that there is a reasonable expectation that the proceeds from the eligible project will be adequate to recover the cost of DOE's facilitation activities for the eligible project.

DOE intends to execute the TFP in a manner that optimizes the use of available funds, and that provides a reasonable expectation that the proceeds from the eligible project will be adequate for DOE to recover the cost of support it provides to the eligible project at the earliest reasonable date. Accordingly, applicants should provide information including:

- Evidence that the proposed project is not duplicative of the functions of existing transmission lines.
- An estimate of the length of time after commencement of commercial operation that the sponsor expects DOE would need to maintain its position under a capacity contract.
- Data showing the expected demand for transmission capacity provided by the project, the need for the electricity expected to be transmitted by the project, the competitiveness of the energy supplied by the project, and the savings to the affected customers while DOE holds an interest.

When it provides such information, the applicant should also identify the risks and uncertainties its estimates are subject to, as well as other factors that would affect the value of DOE's interest in the capacity contract.

4. The applicant must explain how the eligible project advances the priorities established for TFP facilitation in the IIJA.

The IJJA directs that, in evaluating projects for TFP facilitation, DOE shall prioritize projects that will achieve specific objectives.¹⁷ Applicants should provide information demonstrating how an eligible project would:

- Use technologies that enhance the capacity, efficiency, resiliency, or reliability of an electric power transmission system, including (a) reconductoring of an existing electric power transmission line with advanced conductors; and (b) hardware or software that enables dynamic line ratings, advanced power flow control, or grid topology optimization; and (c) additional grid-enhancing technologies the applicant anticipates including in the proposed project.
- Improve the resiliency and reliability of an electric power transmission system
- Facilitate interregional transfer capacity that supports strong and equitable economic growth
- Contribute to national or subnational goals to lower electricity sector greenhouse gas emissions, including the national goal to achieve 100% clean electricity by 2035.

D. Possible Types of Contracts.

In the first solicitation, DOE will identify capacity contract transaction structure(s) for which it is soliciting applications. DOE expects that it will negotiate individual transactions with each eligible project selected for TFP support, but that the transactions will be based on a consistent set of contract forms. The contracts will include terms applicable to and appropriate for each of the selected eligible projects and eligible entities.

¹⁷ IJJA Section 40106(j)(8).

In the general form, DOE expects capacity contract agreements may include elements of the following types of contracts commonly used for transmission services to secure capacity for the eligible project, permit DOE to market its capacity, and ultimately to exit from the eligible project.

- Precedent Transmission Service Agreement. An agreement DOE enters into with the transmission owner, that describes the events and circumstances that must occur before a Transmission Service Agreement takes effect. A precedent agreement would identify the terms under which DOE will enter into the Transmission Service Agreement to take long-term firm transmission service. This agreement would be in effect before transmission service is available from the eligible project, and would include terms such as:
 - A project that receives TFP facilitation, once commercially operational, will operate its facilities used for transmitting electric energy in interstate commerce under an open access, non-discriminatory transmission tariff.
 - Termination provisions with and without fee options for either party should be considered as appropriate. In addition, remedies should be provided if specified conditions precedent are not met. For example, if project construction is not begun or completed by a date certain, the contract would establish the terms on which a party may terminate its commitment; and
 - Provisions governing the sale of capacity to third parties prior to commercial operation. For example, a “most favored nation” provision could be included to ensure that DOE receives terms of service at least as favorable as any subsequent capacity customer. The agreement could also include a requirement

that the eligible entity developing the eligible project include capacity contracted with DOE in a pro rata proportion when it sells uncommitted capacity to third parties. Another alternative might be to allow DOE to reduce its commitment as third parties contract for uncommitted capacity above a certain level.

- Transmission Service Agreement. DOE would enter into this agreement with the transmission owner to provide DOE with firm point-to-point transmission service along the contracted paths for the term of the agreement. The agreement would include:
 - Price, volume, tenor of capacity commitment (DOE capacity contracts may be for up to 50% of the total transmission capacity of the eligible project, with a tenor of up to forty (40) years);¹⁸
 - Incorporation of the transmission provider’s open access transmission tariff; and
 - Right of DOE to market its contract capacity, both short-term and on a permanent basis, and may include a most favored nation right as described previously.
- Transmission Capacity Resale Agreement. This agreement would provide a contractual mechanism for resale on a short-term basis of capacity rights that DOE may agree from time to time to make available. The agreement is entered into between DOE and third parties who seek transmission capacity for less than the full term or full volume of the capacity contract. The agreement would include:
 - Terms addressing creditworthiness of the parties;

¹⁸ Section 40106(f)(3).

- Billing and payment terms and conditions; and
 - Terms identifying DOE’s continued responsibility with respect to the capacity contract.
- Transmission Capacity Transfer or Relinquishment Agreement. This Agreement would reflect DOE’s right to permanently transfer to a third party, or relinquish to the project developer, DOE’s contractual rights to transmission capacity. This agreement would enable DOE to sell its transmission rights and terminate the TFP capacity contract, as contemplated by the IJJA.¹⁹ Terms of this agreement would include:
 - Terms addressing creditworthiness of the party to whom DOE transfers or relinquishes its contractual capacity rights; and
 - The process by which DOE effectuates its exit from the project.
- Transmission Remarketing Agency Agreement. This would be the agreement between DOE and a remarketing agent, to remarket the transmission capacity and ultimately to find a party to novate DOE’s capacity contract. This agreement would enable an agent to post DOE’s transmission capacity for sale on a transmission owner’s Open Access Same-Time Information System (OASIS). The agent would be required to meet contractual standards defined by DOE for its performance as DOE’s remarketing agent.

These examples are identified to explain the types of agreements DOE expects to be involved in a TFP capacity contract transaction. They do not constitute an exhaustive list of legal agreements necessary to complete a TFP transaction.

V. Questions for Requests for Information

¹⁹ See Section 40106(f)(5).

DOE seeks comment regarding all elements of the proposed approach to the TFP described in the previous sections. In addition, DOE seeks comment on the following specific questions.

A. General

(1) Please comment on the TFP solicitation process proposed in this NOI. What are the potential positive and negative impacts of limiting the initial solicitation to capacity contracts for projects that can be completed by December 31, 2027? Rather than conducting separate solicitation processes, should DOE request applications under a single solicitation that remains open for a rolling review and determination process? What are the merits and demerits of using one approach or another to achieve TFP's objectives?

(2) When considering the merits of TFP applications, how should DOE consider the impact a proposed project has on reliability and resilience, reducing greenhouse gas emissions, generating host community benefits, encouraging strong labor standards the growth of union jobs and expanding career-track workforce development in various regions of the country, improving energy equity and achieving environmental justice goals, maximizing the use of products and materials made in the United States, and maintaining or improving energy security? How should DOE evaluate eligible projects that include benefits that may vary across the set of preferred impacts? To what extent should DOE consider additionality of outcome on these dimensions? What information should DOE seek from applicants to inform such considerations? What metrics and methods are available for conducting such evaluations?

(3) To what extent should maximizing the benefit from federal expenditures be a factor considered when comparing eligible projects? How should the "benefit" be interpreted and

measured, either in financial terms, in terms of system benefits, or in terms of policy outcomes as outlined in Question 2? Please provide recommendations for a methodology for making such comparisons of benefit.

(4) What are the best tools for ensuring availability of a skilled workforce to support timely, efficient implementation, project continuity, and success? Specifically, how should DOE encourage the use of Project Labor Agreements that specify required certifications, dispute resolution, and utilization of registered apprentices?

(5) Are there methods and approaches to implementing TFP that amplify and leverage the funding available through TFP, and accelerate the greatest quantity of new transmission development that will best serve the national interest, including by cost-effectively increasing resilience and reducing greenhouse gas emissions, while promoting economic growth and energy justice?

(6) Are there other policy parameters not listed previously that should inform the determination of which proposals most cost-effectively achieve the objectives of the TFP? What criteria would indicate achievement of such parameters? What metrics and methods are available for evaluating a proposed project's potential to achieve the criteria?

(7) Are there types of eligible projects, however defined, where the TFP is an especially suitable and useful method of providing financial support, relative to other forms of financial support, from DOE or other programs?

(8) What criteria should DOE consider for determining that “the eligible project is unlikely to be constructed in as timely a manner or with as much transmission capacity in the absence of facilitation” provided by the TFP?

(9) Should DOE establish a standard format and methodology for each applicant to present economic data, projections, analysis, and other information in support of an application for TFP support? If so, please address the components that should be included as part of a standard format and methodology and what information should be required. Or alternatively, please identify methods or processes that are employed in other federal or non-federal programs, such as the DOE Loan Guarantee Program, that could be adopted by the TFP as standard methods for assessing applications.

(10) The IJA calls upon DOE to consult with, and consider the views of, specific organizations in its considerations of capacity contracts. Before DOE can enter into a capacity contract, the statute requires DOE to consult with the relevant transmission planning region regarding the region’s identification of needs, and DOE is instructed to avoid duplication or conflict with a region’s needs determination when selecting projects.¹⁴ What information should DOE seek from an applicant, transmission owner or operator, or from a regional transmission organization or regional reliability organization to satisfy the consultation requirement in the statute? What are the appropriate points in the process when such consultation should occur?

(11) Please identify any regulatory or business barriers that might impede the implementation of the TFP. Please propose solutions to eliminate or mitigate any identified barriers.

(12) Recognizing that transmission projects are located based on the availability of generation, and ultimately customers to buy that generation, and have limited long term direct employment impacts:

- What equity, energy and environmental justice concerns or priorities are most relevant for the TFP? How can these concerns or priorities be addressed in TFP implementation?
- How might the TFP encourage greater employment, equity, environmental justice, and economic growth? What mechanisms are available to DOE and eligible transmission projects encourage these outcomes? How should the results be measured?
- What regional and local factors should be considered when evaluating TFP applications (e.g., economic considerations, policy considerations, labor-management partnerships, environmental and energy justice considerations, geology, workforce availability and skills, current industrial and other relevant infrastructure and storage available/repurposed/reused, industry partners, minority-serving institutions (MSIs), minority-owned businesses, regional specific resources, security of supply, climate risk, etc.)?

(13) If DOE asks for a market analysis as part of the application process, what should the analysis include so that DOE can be confident that a proposed project will be successful? What qualifications should be required of the parties preparing such analyses?

(14) What can DOE provide that would be helpful to an eligible project to facilitate its collaborations with potential financing partners?

(15) What data should DOE collect from TFP recipients to evaluate the impact of the program? How should this data and the program outcomes be disseminated to the public?

(16) Please provide any other input DOE should consider in the establishment and implementation of the TFP, including any other information and criteria that might be useful in DOE's approach for and implementation of the certification, due diligence review, and selection process.

B. Microgrid Projects.

(17) The "eligible project" definition for the TFP includes a project "to connect an isolated microgrid to an existing transmission, transportation, or telecommunications infrastructure corridor located in Alaska, Hawaii, of a territory of the United States." Which of the forms of TFP support (capacity contracts, loans, or public-private partnerships) are expected to be most useful to the projects to connect microgrids to existing infrastructure corridors as contemplated in the IJJA? What criteria should be used to evaluate qualification of microgrids for support under the TFP?

C. Capacity Contracts

(18) Is it advisable for DOE to limit its first solicitation to applications seeking capacity contracts for projects that are able to commence commercial operation by December 31, 2027, and defer applications to a subsequent solicitation for projects supported by capacity contracts but with a later forecasted commercial operation date, or for projects seeking TFP loans or public-private partnerships?

(19) The IJJA calls on DOE to seek to enter into capacity contracts that will encourage other entities to enter into contracts for the transmission capacity of the eligible projects. On what basis should DOE assess whether a capacity contract with an applicant will encourage other entities to enter contracts for transmission capacity?

(20) Should DOE use any standards, or collect information from applicants, different from what is described in this NOI for selecting among applicants for capacity contracts? If so, please suggest alternative standards or information requirements.

(21) The FERC Pro Forma Open Access Tariff²⁰ allows transmission customer rollover rights with a minimum contract term of five years. If the DOE capacity contract with an eligible entity had a term of five years, would that be sufficient to successfully facilitate construction of an eligible project? If not, what is the minimum contract term length required, with or without rollover rights, needed to successfully facilitate construction of an eligible project?

(22) What conditions precedent would be sufficient for DOE to terminate its contract prior to commercial operation of an eligible project?

(23) Should capacity contracts include provisions that authorize DOE to terminate the contract for convenience subject to a termination fee? What, if any, impact would such a termination provision (and associated fee) have on an eligible project's financing, rate design, or a rate review and approval required from FERC?

(24) Should DOE enter into contingent offers with multiple eligible entities, and award final capacity contracts to the projects that achieve significant milestones first? If so, what should

²⁰ Pro Forma Open Access Transmission Tariff (OATT), available at [Pro Forma OATT - effective March 14, 2022.](https://www.ferc.gov/whats-new/pro-forma-oatt-effective-march-14-2022) | [Federal Energy Regulatory Commission \(ferc.gov\)](https://www.ferc.gov).

be the significant milestones be? What, if any, impact would such an approach have on an eligible project's financing, rate design, or a rate review and approval required from FERC?

(25) Is it advisable for DOE, when selecting eligible projects for capacity contracts, to prioritize projects that have a certain percentage of capacity already subscribed? If so, what should that percentage be? What level of commitment (firm supply versus other types of capacity subscription) should DOE require eligible entities to demonstrate to be selected for a capacity contract? How should applicants be required to document such commitments? Should DOE's capacity be capped as a ratio of the firm subscription obtained before the execution of a capacity contract? If so, what should that ratio be?

(26) Should DOE require counter-parties to capacity contracts to offer DOE's capacity to other customers on a pro rata share before being able to sell the remaining capacity on an eligible project to other customers?

(27) DOE seeks to exit its capacity contract as soon as practicable after determining that sufficient transmission capacity has been secured by other entities to ensure the long-term financial viability of an eligible project. What other contract mechanisms are available to limit DOE's commitment so it may exit, and free up funds obligated to support future projects?

(28) Should DOE receive a more favorable rate for its capacity commitment than other subscribers, to reflect its first mover position?

(29) Please comment on the forms of contractual arrangements discussed previously, and whether the types of contracts mentioned are appropriate vehicles for achieving the statutory requirements and goals of the TFP. If not, please suggest other contractual arrangements or structures that would more effectively meet the IIJA's requirements and goals. DOE welcomes inclusion of examples of proposed contract terms as part of a response to this RFI.

VII. Response Guidelines

NOI/RFI responses shall include:

- NOI/RFI title and reference number;
- Name(s), phone number(s), and email address(es) for the principal point(s) of contact;
- Institution or organization affiliation and postal address; and
- Clear indication of the specific question(s) to which you are responding.

Responses including business proprietary information will be handled per guidance in Section VIII.

NOI/RFI responses should be submitted electronically to [www.regulations.gov].

VIII. Business Proprietary Information

Pursuant to 10 C.F.R. §1004.11, any person submitting information that he or she believes to be business proprietary and exempt by law from public disclosure should submit via email two well-marked copies: One copy of the document marked “Business Proprietary” including all the information believed to be proprietary, and one copy of the document marked “non-Proprietary” deleting all information believed to be business proprietary. DOE will make its own determination about the business proprietary status of the information and treat it according to its determination. Factors of interest to DOE when evaluating requests to treat submitted information as business proprietary include: (1) a description of the items; (2) whether and why such items are customarily treated as business proprietary within the industry; (3) whether the information is generally known by or available from other sources; (4) whether the information has previously been made available to others without obligation concerning its business proprietary nature; (5) an explanation of the competitive injury to the submitting person which would result from public disclosure; (6) when

such information might lose its business proprietary character due to the passage of time; and (7) why disclosure of the information would be contrary to the public interest.

Signing Authority

This document of the Department of Energy was signed on May 6, 2022, by Patricia A. Hoffman, Acting Director of the Grid Deployment Office, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. The administrative process in no way alters the legal effect of this document upon publication in the *Federal Register*.

Signed in Washington, DC, on May 6, 2022.

Patricia A. Hoffman
Acting Director
Grid Deployment Office