

## **RESPONSES TO QUESTIONS RELATED TO IRS NOTICE 2006-25, QUALIFYING GASIFICATION PROGRAM – April 10, 2006**

DOE is answering questions related only to DOE certifications. Other questions should be directed to the IRS by calling Doug Kim or Kathy Reed at (202) 622-3110, or by faxing the questions to them at (202) 622-4779.

### **1. Priority Evaluation Criteria**

- a. IRS Notice 2006-25 provides little guidance regarding the process and specific criteria that will be employed by DOE and Treasury to select the winning applicants if requests total more than the available \$350 million available for Section 48B. Can DOE provide a list of criteria that will be used and the weight to be given to each criterion for any scoring process that DOE may use to rank projects?

**Response 1a – Evaluation Criteria are provided in IRS Notice 2006-25 Appendix B (E) of the IRS Notice. DOE will not certify an application that does not satisfy all criteria.**

- b. If DOE does not plan to rank projects, but merely to determine which projects meet certain eligibility criteria, how will final selections be made in the event that there are more than \$350 million in qualified applications?
- c. Is there any weighting value among the priority criteria of “carbon capture capability”, “renewable fuel” and “experience” (IRS Notice 2006-25: section 4.02(3)(a))? If so what are they?
- d. Does meeting more than one priority criterion advance one’s project in a competitive selection process? Does the degree a project or project team has “experience,” uses “renewable fuel,” or “captures carbon” advance one’s project in a competitive selection process?
- e. Are there any other priority criteria as directed by the Secretary of Energy? If so, what are they?

**Response 1 b,c,d,e –DOE will only rank projects that are deemed “qualified” in the event there are more than \$350 million in qualified applications. No additional information related to the criteria or ranking process will be released.**

### **2. Legislative Intent/Policy**

- a. What is the basis for section 4.02(5) of IRS Notice 2006-25 regarding possible cross over ITC support of projects from 48A to 48B, as it appears to contradict EPACT Section 48B, Subsection (e) – Denial of Double Benefit, which specifically prohibits qualification for both 48A and 48B investment tax credits?

**Response 2a - Please refer to the IRS for a response to this question.**

- b. How do you intend to interpret the eligible entity definition of “principally intended” for use in a domestic project which employs domestic gasification

applications related to (A) chemicals, (B) fertilizers, (C) glass, (D) steel, (E) petroleum residues, (F) forest products, and (G) agriculture, including feedlots and dairy operations” (emphasis added, EPACT Section 48B, Subsection (c) (7))?

**Response 2b - DOE may certify a project only if it supplies more than 50% of the thermal output (in Btu) from the gasification process in the form of gases (syngas) for direct use or subsequent chemical or physical conversion in an application related to (A) chemicals, (B) fertilizers, (C) glass, (D) steel, (E) petroleum residues, (F) forest products, and (G) agriculture, including feedlots and dairy operations.**

- c. The term “gasification technology” requires that the feedstock be converted into a synthesis gas composed primarily of carbon monoxide and hydrogen. How do you intend to interpret the term “primarily”?

**Response 2c - “Primarily” is used in the definition of gasification technology. The proposed technology must be capable of breaking the fuel source down to its most basic components, which include carbon monoxide and hydrogen. Since there are various configurations of air-blown and oxygen-blown gasification technologies, DOE will not attempt to determine absolute values for hydrogen and carbon monoxide for DOE certification. A proposed project utilizing gasification to produce a gas containing intermediate products, without breaking the feedstock down to the most basic components of carbon monoxide and hydrogen, does not preclude DOE certification.**

- d. The term “eligible entity” refers to persons that will employ gasification applications related to listed industries. Can you confirm that such entities must actually use the “eligible investment” to manufacture synthesis gas for majority use in (or by) one of the listed industries? Can you confirm that the entity can be a special person entity that is owned by another person that is in a listed industry or manufactures a listed product?

**Response 2d - Please refer to the IRS for a response to this question.**

### **3. Appendix B - Application Clarifications**

- a. How will each applicant’s “nameplate capacity” be determined and then validated by DOE (IRS Notice 2006-25, section 4.02 (3)(b) and (c))? What happens if subsequent design changes serve to downrate the nameplate capacity in a significant manner while the ITC amount requested remains the same? Could a change in nameplate capacity alter the results of a certification (Notice section 4.02(3)(b))?

**Response 3a - Please refer to the IRS for a response to this question.**

- b. How do you define “public policy requirements” (IRS Notice 2006-25, Appendix B, Section III)?

**Response 3b – In the context of Section III, public policy could include local zoning laws, county or state policies that would require approval in order for the proposed project to go forward.**

- c. Is it necessary to have a “market study” for co-production of electricity when the intent (or at least the only information known at this time) is selling into a well-established power market such as ERCOT (IRS Notice 2006-25, Appendix B, Section V)?

**Response 3c – Some type of “market study” is requested in order to verify that there is a viable market for the product(s) from the plant.**

- d. Are the “project economics” to be shown with or without the effect of the tax credit (IRS Notice 2006-25, Appendix B, Section V)?

**Response 3d – The “project economics” should be shown with the effects of the tax credit.**

- e. How do you define “market potential” (IRS Notice 2006-25, Appendix B, Section V)?

**Response 3e - Market Potential refers to the potential of the technology to be replicated in subsequent commercial projects beyond the project proposed by the applicant.**

#### **4. Reconciliation of Terms**

- a. When is a gasification project considered to be “placed in service”? (IRS Notice 2006-25, Sections 2.04 and Sections 4.02(10); note 48B(b)(1) also refers to when the property is placed in service and certainly the terms have the same meaning in all three places). This term has a well established meaning for depreciation purposes, and presumably the intent was to apply the same standard – that is, when the facility is first placed in a condition or state of readiness and availability for its intended purpose, as provided in Treas. Reg. sections 1.46-3(d)(1)(ii) and 1.167(a)-11(e)(1)(i). Can you confirm that a gasification project is placed in service when the project is first placed in a condition or state of readiness and availability for its intended purpose (i.e., gasification), as provided in Treas. Reg. sections 1.46-3(d)(1)(ii) and 1.167(a)-11(e)(1)(i) ?
- b. How does the requirement in Appendix A, Section 2(3) of IRS Notice 2006-25 that the “fuels identified in Section 48(c)(2) will at all times cumulatively comprise at least 90 percent of the total fuels . . . required by the Project for the production of chemical feedstocks, liquid transportation fuels, or co-production of electricity” reconcile with a Project start-up period, in which a significant amount of natural gas, which is not part of the long-term fuel plan, may be required for various start-up procedures and testing? The words “at all times” were added to the original language in EPACT Section 48B(d)(3)(D) and may be impossible to comply with for most projects, if the start-up period is included. Could a limited

exception be made for start-up periods – e.g., changing “at all times” to “at all times following the one year anniversary of the date the facility was placed in service?”

- c. Will IRS interpret “placed in service” to apply only to those project elements that are considered “qualified investment”? Project elements are often designed, constructed and operated in a phased-in manner.

**Response 4. Please refer to the IRS for responses to these questions.**

**5. Confidentiality**

- a. Will an applicant’s entire application be held in confidence by the government and if not, what is the specific procedure for marking certain pages or data in an application as “Confidential”? Will the applicant's application be subject to FOIA? Is there an opportunity to specify portions to be redacted or otherwise include a Deletions Statement for purposes of Code section 6110(c)(1)?

**Response 5a – DOE will treat the entire application as confidential. The applications are subject to FOIA, and any applicable exemptions.**

- b. If an applicant marks pages as Confidential, will all parties who view them maintain confidentiality? How long and under what conditions are the applications treated as Confidential?

**Response 5b – All DOE reviewers of the application will maintain confidentiality.**

- c. Does the Treasury or DOE plan to make public announcements of certifications or awards at such time periods as October 2, 2006 and November 30, 2006? If so, what is the plan to provide sufficient notice so that companies can prepare appropriate disclosure information?

**Response 5c – Please refer to the IRS for a response to this question.**

**6. Verification of Financial Viability (IRS Notice 2006-25, Appendix B, (D)(VI) and (G))**

- a. Please provide additional guidance on what constitutes a qualified independent financial advisor, or bank engineer. Is there an approved list?

**Response 6a – There is no approved list. The independent advisor/reviewer should provide their qualifications.**

- b. Viability of what? – project, eligible entity, project sponsors, or how are they weighted?

**Response 6b – Under Appendix B (D)(VI) the financial viability of the proposed project will be evaluated.**

- c. Is a financial viability letter enough? What is expected of the sponsors to establish financing viability? A letter from some financier (at some probably considerable cost) is relatively easy to obtain. DOE could hire an expert to look at the contract structures for the sale of products, the coverage ratios, the ratings of the product-purchasing entities for all the projects, the amount of equity in the financial plan and the ability of the sponsor(s) to provide that equity. Qualified third party assessment is required as well.

**Response 6c - In general, a letter is not sufficient to establish financial viability of the proposed project. The applicants are expected to demonstrate that the proposed project will be financially viable by providing documentation requested in IRS Notice 2006-25, Appendix B (D) (VI). For projects employing non-recourse debt financing, a report of an independent financial analyst must be provided in accordance with the instructions in Section G of the Appendix.**

- d. Which audited financial statements are required, that of the applicant or the sponsor(s)? In some instances the applicants may be special purpose entities with no prior financial statements.

**Response 6d – Applicants should supply whatever financial statements are available to support their financial viability claim.**

- e. “Applicant should demonstrate that the award recipient is financially viable without the receipt of additional Federal funding .... ” (emphasis added). Does the word “additional” refer to the tax credit being applied for, or other support, including grants and loan guarantees?

**Response 6e – The word “additional” does not refer to the tax credit being applied for.**

**7. Definition of terms "Gasification Technology" and "Eligible Property" (EPACT Sections 48B(c)(2) and (3))**

- a. The term “eligible property” refers to equipment that is “necessary for the gasification technology.” How broadly should this phrase be interpreted? Does this include separately, or in combination: air separation equipment, feedstock preparation and feed systems equipment, gasifier and associated equipment (such as quench systems, slag removal and treatment systems, syngas coolers and scrubbers), and equipment to clean up synthesis gas (“syngas”) and adjust the syngas composition (e.g., shift catalyst systems and pressure swing adsorbers)?
- b. Does this include retrofit of downstream process equipment (such as existing combustion turbines) necessary to enable syngas use as replacement for, or distinct from, the use of natural gas?
- c. Does this include any additional downstream syngas conversion process equipment necessary to utilize the syngas (e.g., for making chemicals or fertilizer from the syngas)?

- d. Does this include any additional feedstock unloading or handling, such as rail spurs or barge unloading systems?

**Response 7 – Please refer to the IRS for responses to questions listed under number 7.**

**8. Process (IRS Notice 2006-25, Section 5.02)**

- a. How does applicant deal with additional or better information after the June 30, 2006 submission date? Can additional or better-defined information be submitted to DOE between June 30 and October 2 for the first solicitation period?

**Response 8a – Per the Notice, “DOE reserves the right to request clarifications and /or supplemental information from some or all applicants...” However, additional information regarding the Application will only be accepted if specifically requested by DOE.**

- b. Is a new Closing Agreement needed each time the members of the project entity change, or each time the project entity itself changes? Does this requirement continue for the life of the Project (IRS Notice 2006-25, Section 4.02 (11), also Appendix A) or does it have some reasonable time limit?

**Response 8b – Please refer to the IRS for a response to 8b.**

**9. Certification vs. Audit**

- a. Can certain statutory requirements that will have been considered in the certification process be deemed final, so that they are not subject to reconsideration on tax audit? Can Treasury provide a list of requirements that will remain subject to verification on audit?

**Response 9a – Please refer to the IRS for a response to 9a.**

**10. Federalization**

- a. Does NEPA apply to Section 48B processes?

**Response 10a – NEPA does not specifically apply to Section 48B processes.**

- b. Is an EIS required, as opposed to a list of permits?

**Response 10b – DOE cannot answer this. Other actions, not specifically related to Section 48B processes may trigger the requirement for an EIS.**

- c. Any other federal requirements related to receiving an ITC?

**Response 10c – This question is too broad to provide a specific response.**