

## Top 10 Things to Do While Waiting on the USDA 9003 Solicitation

*By Cynthia Thyfault, Founder & CEO*

The biobased products and fuels industry has been anxiously waiting for the new USDA Biorefinery, Renewable Chemical, and Biobased Product Manufacturing Assistance Program. Authorized in the 2014 Farm Bill and with the addition of new categories for renewable chemicals and biobased products, there are many more opportunities for a variety of biobased technologies to be funded. Approximately \$500 million in loan guarantee authority will be available in this next round, with on-going application cycles opening up in October and March of each year.

It has been publicly discussed that the USDA will be changing their evaluation process, and utilizing a two-stage process similar to DOE to evaluate this new round of 9003 applications. For the first phase, a lender letter of recommendation will be required, as well as an independent feasibility study, business plan, proforma financial model, the 1479-1 Loan Guarantee Application form, and the 9003 Self-Scoring Worksheet.

Those applications that are “green-lighted” by USDA will be invited to compete in the second round of competition, which will include a Lender’s Analysis, Independent Engineering Report, an Environmental Assessment, and a Technical Report. After the Phase Two applications are scored, evaluated, and the NEPA Review is completed, the applicants (through their lenders) that are selected to receive a loan guarantee will proceed with a USDA conditional commitment, the final commitment, and funded.

The application window for Phase One Applications to be submitted is anticipated to be open for approximately 90 days after the NOSA is published. Based on previous 9003 rounds, the “Green Light” letters could be issued in Fall 2015, another 90 day period will open up for Phase Two applications, and then the final evaluation process with the NEPA review and other internal evaluations could be completed in the same manner as past application rounds, within six – nine months. Final closing of funding will be contingent upon meeting the criteria outlined in the conditional commitment, which includes providing equity, final contracts for feedstock and sales agreements, and any other conditions which need to be made.

It is also anticipated that USDA will announce new criteria in the new Final Rule for project financing guidelines for this new program. The USDA National Office staff has worked tirelessly with the financial community to create more of a “project finance” structure than was available in the former 9003 regulation.

In the past, the projects had to produce at least 50% or more advanced biofuel. Now, new guidelines are being developed to allow more technologies to qualify for the 85% funding pool for advanced biofuels, with the other 15% pool reserved for biochemical and bioproducts that do not have any biofuel component. However, until the Final Rule and the NOSA are released, there is not a clear pathway to judge whether a technology will qualify, or which pool of money it may qualify for.

**So what should a company be doing in the meantime to prepare for the application process?**

Our firm is the leader in successfully assisting over 13 companies, including Sapphire Energy, Fulcrum, Chemtex, and Cool Planet, to apply for a 9003 loan guarantee.

Based on the experience gained from the prior applications, and looking ahead to the next application round that should be opening up in the next few weeks, here are my Top 10 “Things to Do” while waiting for the next NOSA:

**#10 – Read the last NOSA and Application Instructions** (from October 2013) for this program and gain an understanding of the time, resources, detail, and effort that is entailed in preparing for an application. The USDA has removed this information from their website, but we still have it posted on our website here. The structure for the feasibility study, technical report, and environmental assessment will be similar to that required in the new NOSA. Check the prior guidance documents and self-scoring criteria to preliminarily determine if you have all of the elements that will be required to be successful.

**#9 – Hold a management team meeting** with your staff and plan for a significant contribution of time and resources to complete the application. Prepare an itemized budget for the application as well as a company budget for the next year during the application process. Be prepared to show both of these budgets to your lender. Present the budget and workplan to your board of directors and obtain a preliminary approval to move forward. Once the application window is opened, it will be a sprint to the finish line. Every day will be crucial to allow for completion all of the elements for Phase One, including the lender negotiations.

**#8 – Work with your feedstock providers** to finalize supply agreements, and update any feedstock studies that you have completed. This is also a key scoring criteria. Mark Riedy, Partner with Kilpatrick Townsend & Stockton LLP, has had years of experience with this 9003 program. He has served as the Project Attorney for numerous successful borrowers by assisting them achieve financial closings after obtaining their conditional commitment awards. Mark advises that these contracts should evidence that the feedstock supply will be fully available throughout the term of the agreement, and that insurance policies exist to provide “price collars” to protect against market price increases above the contracted feedstock purchase prices.

**#7 – Finalize sales agreements**, whether it is at the letter of intent stage or a final contract. This is also a category that is included in the scoring criteria. Mark also advises that insurance policies also exist to provide a “price floor,” so that if the market price decreases below the

contractual price, then the projected contract sales revenues are protected. Insurance policies also are available, he advises, to provide technology wraps, project revenue protection, tax equity protection, and other types of risk mitigation. Mark stresses that “insurance is becoming more and more important to obtaining better financing terms.”

**#6 – Get your financial proforma updated**, and make it easy to view and to print for lenders and investors. Make sure that the proforma is reflecting current, conservative, industry sales prices or benchmarks, especially for renewable fuels projects. Finalize your business plan, and make sure it reflects the current business conditions and risk factors. Be detailed, realistic, conservative, and discuss your five year plan. Keep from using language that is designed more for fund-raising than business planning. Set up a web-based “dropbox” account and establish a data room for all documentation for your loan guarantee application so that it can easily be shared with consultants, engineers, attorneys, and lenders.

**#5 – Compile information on your technology** at the bench, pilot, and integrated demonstration level and store in a separate section in the data room in a well-organized manner. Review your site information, environmental permit requirements, site purchase or lease, and other environmental and technical issues or requirements. How far you will advance in the USDA competition will be dependent upon how far your project technology has progressed to date.

**#4 – Contact an independent engineer** and have an engineering company review your technology compilation (see #5 above) and discuss a plan to complete an independent engineering review.

Bill Crump, Senior Project Manager for Leidos, advises companies to understand that:

“The Independent Engineer review is performed to assess the technical risks of a project, not performing according to the technical inputs of the financial model used to obtain financing. The major focuses of our review are the costs, schedule, justification for the intended operating performance of the facility and the ability of the developer to execute the project. Within these overlapping categories are included important topics, such as site selection, access and preparation; integrated technology demonstration; operations and maintenance planning; contractual requirements; environmental requirements; scheduling; and financial modeling.”

In Bill’s experience in working with new technology projects, he stated that “We often see developers who are either not experienced in the execution of a major industrial facility, have not accomplished extended, continuous runs with their processes in an integrated plant or have not developed a realistic project cost model. Some developers appear to be more intent on demonstrating perceived progress in order to attract investment than being focused on building a successful project or a successful company.

“My advice to developers with complex new technology projects is to spend the necessary time and money to solve the process and equipment issues at the smaller project stage prior to building the larger ones. In addition, if a vendor is providing a package for a complex process

step, unless they have nearly identical experience to what is needed, the developer should test the vendor package at the pilot scale. There should be contingencies in the project costs for construction unknowns, extended start-up times and equipment modifications.

“Finally, the developer and their investors need to be patient as start-up can take one to two years before reaching continuous, near nameplate production rates. The unfortunate reality for developing complex new technology projects is that developers take considerable upfront investment for their technologies to proceed logically through the scale-up steps, take extended periods of time before the first commercial facility is operating, and often have substantial investment risk. Without significant investment help, it may be that these types of projects will mostly be developed by deep-pocket companies.”

**#3 – Contact your USDA state energy coordinator** and let him or her know you are interested in applying. When the new regulations are released by USDA, these USDA staff can work with your company to assist with any questions, eligibility requirements, and other issues that you are experiencing while completing the application process. Ask the USDA representative for information that you can share with your prospective lenders when the new program guidelines are released.

**#2 – Find an experienced consultant** that you feel comfortable with to guide you through the application process. Ask questions concerning their success rate on prior USDA 9003 rounds of funding and their time availability to complete the project. Wes Bolsen, Global Head BD & Public Affairs, Cool Planet (and recent awardee of a \$91 million USDA 9003 Loan Guarantee) states “Westar has led the USDA loan guarantee process for me twice, and both times we were successful. We started working together months in advance of the solicitation actually issuing so that we could be ready. It takes a lot of work to put an application together, and I am not sure how any company could ever do it alone.”

**#1 – Find a lender** – because they are actually the applicant, not your company. You cannot be successful in this USDA loan guarantee program, or any other one for that matter, without a lender. The best place to look? The one who knows you the best, your current banker. Have the current business plan, updated proforma, detailed technical and environmental information, and documented evidence of equity, feedstock and sales agreements and any other information available in the data room to provide the full package that a lender will need to properly evaluate the lending opportunity. Understand that your application is competing with current and future projects that they can approve and fund in a matter of weeks, not a year or more. Show not only the equity that you have for the new project, but equity that will be in place to pay for operating expenses for the next year, including the expenses of hiring consultants, engineers, and attorneys.

### **The Bottom Line**

It's been hard for the biobased industry to wait for this next round, but it's coming soon. The most successful projects, and the ones that will get funded, will be the ones that are prepared and ready to move quickly when the new NOSA is released.

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