

### § 452.3

*EPAct 2005* means the Energy Policy Act of 2005, Public Law 109-58 (August 8, 2005).

*Open window* means the period during each reverse auction, as specified in an associated solicitation, during which DOE accepts bids for production incentives under this part.

*Secretary* means the Secretary of Energy.

#### § 452.3 Solicitations.

The reverse auction process commences with the issuance of a solicitation by DOE. DOE will publish a solicitation in the FEDERAL REGISTER and shall post the solicitation on its website at [www.eere.energy.gov](http://www.eere.energy.gov) no later than 60 days before the bidding in a reverse auction under this part commences. The solicitation shall:

- (a) Invite interested persons and businesses to submit pre-qualification statements;
- (b) Set forth the terms on which bids will be accepted;
- (c) Specify the open window for bidding; and
- (d) Specify the date by which successful bidders will be required to file pre-auction eligibility submissions.

#### § 452.4 Eligibility requirements.

- (a) *Pre-auction eligibility submissions.*
  - (1) Entities that intend to participate in a reverse auction, within the time period stated in the relevant solicitation, must file a pre-auction eligibility submission that provides all information requested in the applicable solicitation to which it is responding, including an implementation plan.
  - (2) Each pre-auction eligibility submission's implementation plan must, at a minimum:
    - (i) Demonstrate that the filing party owns and operates or plans to own and operate an eligible cellulosic biofuels production facility;
    - (ii) Identify the site or proposed site for the filing party's eligible cellulosic biofuels production facility;
    - (iii) Demonstrate that the cellulosic biofuel to be produced for purposes of receiving an award either currently is suitable for widespread general use as a transportation fuel or will be suitable for such use in a timeframe and in sufficient volumes to significantly con-

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tribute to the goal of 1 billion gallons of refined cellulosic biofuel by August 2015.

(iv) Provide audited or *pro forma* financial statements for the latest 12 month period; and

(v) Identify one or more proposed sources of financing for the construction or expansion of the filing party's eligible cellulosic biofuels production facility.

(b) *Notification of pre-auction eligibility status.* DOE shall notify each entity that files a pre-auction eligibility submission of its acceptance or rejection no later than 15 days before the reverse auction for which the submission was made. A DOE decision constitutes final agency action and is conclusive.

(c) *Progress reports.* Within one year after the reverse auction in which a bidder successfully competed, the bidder must submit a progress report that includes all additional information required by the solicitation in which the bidder submitted a successful bid and which demonstrates that the bidder has:

- (1) Acquired the site where its proposed eligible cellulosic biofuels production facility is or will be located;
- (2) Obtained secure financing commitments for the plant or expansion thereof, as necessary to produce cellulosic biofuels; and
- (3) Entered into a written engineering, procurement, and construction (EPC) contract for design and construction of the eligible cellulosic biofuels production facility; such EPC contract must provide for completion of construction of the eligible cellulosic biofuels production facility such that operations at the plant or plant expansion will commence within three years of the reverse auction in which the bidder successfully competed.

(d) *Production agreement.* Within 90 days after submission of its progress report under paragraph (c) of this section, the successful bidder must enter into an agreement with DOE which requires the bidder to begin production of commercially significant quantities of cellulosic biofuels, at the eligible cellulosic biofuels production facility that was the subject of the relevant bid, not later than three years from the date of the acceptance of the successful bid.

(e) *Confirmation of continuing eligibility.* After receiving the progress report described in the paragraph (e) of the section and upon confirmation by DOE that the successful bidder has entered into a production agreement with DOE, as described in paragraph (d) of this section, DOE will confirm to the bidder that it continues to meet the eligibility requirements of this part.

(f) *Contractual condition on eligibility.*

(1) As a condition of the receipt of an award under this part, a successful bidder in a reverse auction under this part must demonstrate that it has fulfilled the terms of its production agreement entered into with DOE pursuant to paragraph (d) of this section.

(2) As a condition of continuing to receive production incentive payments under this part, a bidder that has entered into a production agreement with DOE must annually submit to DOE, by a commercially reasonable date specified by DOE, verification of the bidder's production volumes for the prior calendar year. Within 90 days of the submission of such verification, DOE shall notify the successful bidder whether the bidder has fulfilled the terms of the production agreement and shall make payment of any production incentive awards then outstanding for the one year period covered by the verified data submission.

#### § 452.5 Bidding procedures.

DOE shall conduct an electronic reverse auction through a limited duration single bid per producer auction process open only to pre-auction eligible cellulosic biofuels producers. The following procedures shall be used:

(a) DOE shall accept only electronic bids received from pre-auction eligible cellulosic biofuels producers during the open window established in the solicitation. The open window shall consist of a single continuous period of at least four hours for each auction.

(b) Bids shall identify an estimated annual production amount from an eligible cellulosic biofuels production facility on a per gallon, site, entity, and year specific basis for a consecutive six year production period. A bid also may be submitted for additional incentives for uncovered production volumes at a

site where an award was made in an earlier auction round.

(c) All bids must set forth the methodology used to derive the estimates of annual production volumes covered by the bid and the bid shall be calculated on a gasoline equivalent volumetric basis using the lower heating Btu value of the fuel compared to the lower heating Btu value of gasoline.

(d) All bids will be confidential until 45 days after the close of the window for submission of bids for the reverse auction.

(e) Bid evaluation and incentive awards selection procedures include the following:

(1) After DOE evaluates the bids received during the open window, it shall, within 45 days following the close of the open window for submission of bids for the reverse auction, announce on DOE's website and by direct mail the names of the successful bidders and the terms of their bids.

(2) DOE shall issue awards for the bid production amounts beginning with the bidder that submitted the bid for the lowest level of production incentive on a per gallon basis.

(3) In the event of a tie among the lowest bids, preference will be given to the lowest tied bidder based on DOE's evaluation of the extent to which the tied bids meet the following criteria:

(i) Demonstrates outstanding potential for local and regional economic development;

(ii) Includes agricultural producers or cooperatives of agricultural producers as equity partners in the ventures; and

(iii) Has a strategic agreement in place to fairly reward feedstock suppliers.

(4) In the event more than one lowest tied bid equally meets the standards in paragraph (c)(3) of this section, the award will be distributed equally on a per capita basis among those lowest tied bidders meeting the standards.

#### § 452.6 Incentive award terms and limitations.

(a) *Amount of incentive.* Subject to the availability of appropriated funds and the limitations in paragraph (c) of this section, an eligible cellulosic biofuels producer selected to receive an award