DOE's New $900M Funding for Small Modular Reactor Project Teams

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PRACTICES Data Centers and Digital Infrastructure, Energy, Power and Natural Resources, Nuclear Energy, Government Contracts

Update: On March 24, 2025, the DOE re-issued the solicitation "to better align with President Trump's bold new agenda to unleash American energy and AI dominance." The updated solicitation removed all requirements for Community Benefits Plans and related elements, and changed the submittal process to be managed through FedConnect. The re-issuance of the solicitation requires that all applicants re-submit applications in their entirety, noting that no previous submittals will be evaluated. Submittals are due by April 23, 2025, at 5:00 p.m. ET.

On June 17, the Department of Energy (DOE) issued a Notice of Intent announcing $900 million in forthcoming funding to spur "fleet-level" deployment of Small Modular Reactors (SMR). SMRs represent a scalable approach to nuclear reactors—electric generating facilities that range in size from one megawatt (MW) up to 300 MW. As such, SMRs are much smaller than the traditional 1,000 MW or larger (gigawatt-size) nuclear power plants built in the 1970s. Such gigawatt-size nuclear power plants could each meet the electricity needs of 100,000 homes and were designed to be attached to high-voltage transmission lines. However, smaller SMR power plants can be designed to provide tailored power solutions for data centers, industrial uses and even relatively small commercial applications that need reliable around-the-clock electric energy.

The primary benefit of SMR power plants comes from the fact that SMRs can be manufactured in a factory and shipped, fully assembled, to a site. Compared to gigawatt-size nuclear power plants, each of which was uniquely designed, the first of its kind, and constructed at enormous cost with inherent delays, SMRs by design are intended to be standardized and replicated, which will drive down the cost of constructing such "nth of a kind" nuclear power plants and simultaneously enhance their safety.

By design, SMRs will be small enough to provide dedicated power sources for data centers, industrial uses, and commercial applications, while still being capable of achieving multi-megawatt scale capacity when deployed in groups. While the technology behind these reactors is advanced, SMR designs propose manufacturing processes that are significantly simplified compared to traditional gigawatt-size reactors. Proponents hope that these more readily replicable designs will allow economies of scale to be achieved from a production line approach. Global interest in SMRs continues to grow rapidly, but the domestic market is still at an early stage with an array of impressive designs competing to establish market dominance. The DOE's announcement of the Generation III+ SMR Program underlines its support for the accelerating development of the domestic market.

DOE's funding is split into two tiers. Under Tier 1, the bulk of the funding—$800 million—will be awarded to up to two "first-mover" **project teams** involved in pioneering initial deployment of a reactor design. Tier 2, providing the final $100 million, aims to assist with follow on "nth-of-a-kind" orders by clearing early project obstacles, bolstering the domestic supply chain, and increasing confidence in cost and schedule estimates for nuclear projects.

“Other Transaction Agreement” Authority

DOE plans to provide the bulk of its funding through “Other Transaction” agreements. An Other Transaction (“OT”) is a federal contract instrument that is neither a government contract nor a grant or other assistance agreement. OTs are exempt from most government contract laws and regulations and, with certain exceptions, can be generally exempt from the Uniform Guidance and the Federal Acquisition Regulation (FAR), the regulations applicable to grants and Federal financial assistance. Only certain agencies, including the DOE, have statutory authority to issue OTs. The flexible, streamlined rules and terms and conditions for OTs are often helpful in allowing agencies to procure research and development from non-traditional entities such as startups, which might be unwilling or unable to meet the complex compliance obligations that accompany traditional FAR-based government contracts.

Despite the added flexibility that OTs afford, the instruments are complex to negotiate. DOE and other agencies with OT authority will often use procurement statutory and regulatory frameworks as a starting point for negotiations. OT rules also vary based on the authorizing statute. DOE has two separate grants of OT authority,[1] however, subject to different rules: 42 U.S.C. 7256(a) grants DOE general authority to enter into OTs, while 42 U.S.C. 7256(g) grants additional OT authority directed specifically to research, development, and demonstration programs. “Additional authority” OTs under 7256(g) are subject to certain statutory limits that do not apply to general authority OTs, but also afford DOE increased leeway to negotiate intellectual property and data protection not available under DOE’s OT general authority.

Tier 1 – “First Mover Team Support”

> Project Teams (i.e., joint ventures) competing for Tier 1’s $800 million funding pool must include a domestic utility, a technology vendor (bringing the reactor design), and at least one more entity—either a constructor or an “end-user.” Teams will be prioritized based upon a listing of criteria generally emphasizing commercial viability and project execution.
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> Throughout the Notice of Intent, DOE emphasized the project goal of building an orderbook ensuring the winning projects are “nth of a kind” and not one-offs.

Tier 2 – “Fast Follower Deployment Support”

> Tier 2 is subdivided into 3 sub-tiers. Tier 2.1 aims to streamline the site-selection and permitting processes; and is available only to plant owners or utilities. Tier 2.2 is dedicated to supply chain strengthening and can be used to attain certain nuclear-specific manufacturing certifications or to expand domestic production facilities. Finally, Tier 2.3 intends to increase confidence in project cost and schedule estimates by funding the development of detailed estimates for projects.

For more information or assistance with nuclear development projects, project finance or team development, or energy regulatory guidance, please contact one of the Haynes Boone lawyers below.

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[1] Separate and in addition to DOE’s OT authorities, the Advanced Research Projects Agency – Energy (ARPA-E) has OT authority conferred in its authorizing statute, 42 U.S.C. 16538(f).