

STRUCTURING A SUCCESSFUL BIO-GAS BENEFICIAL USE PROJECT

Presented By: Rick Sapir
Hawkins Delafield & Wood LLP
esapir@hawkins.com
973-642-1188

BIO-GAS BENEFICIAL USE

- Landfill Gas
- Digester Gas
 - WWTP Residuals
 - Dairy Farm Waste
 - Food (and Other Organic) Waste
- Established Technologies and Many Existing Projects
- Trending From Electricity Production to RNG

CONDITIONS ARE RIPE

- Fuel Prices Elevated
- Number of Federal and State Incentives
- Value of Environmental Attributes
 - In Some Cases, Multiples of Value of Commodity
- Inflation Reduction Act Incentives
- Utilities Anxious to Participate
- Highly Competitive Market

POTENTIAL TO BE HIGHLY BENEFICIAL PROJECTS

- Financial Windfall
- Realize Avoided Costs
- Technical Expertise
- Other

PROPER PLANNING AND STRUCTURING ARE KEY TO CAPTURING BENEFITS

- Avoid Procurement Challenges
- Avoid Waste of Time, Money and Conflict
- Achieve Specific Objectives
- Maximize Benefits

PROCUREMENT CONSIDERATIONS

- General Procurement Consideration Apply
 - No Arbitrary or Capricious Acts
 - Maintain Level Playing Field
 - Follow Applicable Procurement Statute
 - Follow Solicitation Document

BIO-GAS PROJECT SPECIFIC PROCUREMENT CONSIDERATIONS

- Identify and Disclose Most Important Objectives
- “Best Value” Based Selection
 - Not Most \$
- Identify and Specify Ownership Model
- Identify Scope of Services
 - Collection System?

BIO-GAS PROJECT SPECIFIC PROCUREMENT CONSIDERATIONS (cont'd)

- Specify (and Consider Limiting) Economic Benefit(s) Proposals
 - Share of Revenues
 - \$ per MMBTU
 - Other
- Include Form of Contract in RFP
 - Common Assumptions

CONTRACT CONSIDERATIONS

- Alignment of Interests
- Consider Gas as Asset Not a Waste Product
- Security for Performance
- Performance Guarantees
 - Especially if Relying on Revenue Sharing
- Guaranteed Commercial Operation Date
- Generally No Guarantee of Volume or Quality
 - Relief Events For Poor Quality or Volume of Gas

CONTRACT CONSIDERATIONS (cont'd)

- Identify Other Appropriate Relief Events
- Address Excess Gas
- Anticipate Future Developments
- Clarity on Compensation Structure
 - \$ per Gas Available vs. Gas Sold
 - Gross Revenue v. Net Revenue
 - Verification of Revenue Transparency
 - Minimum Guaranteed Payment

FINAL THOUGHTS

- Foundational Work Is Essential
- Industry Input is Helpful
- Interests Can Become Unaligned
- Contract Has To Be Protective But Must Be Fair and Reasonable

QUESTIONS

?

RICK SAPIR
HAWKINS DELAFIELD & WOOD LLP
973-642-1188
esapir@Hawkins.com