March 09, 2022

The Honorable Gina M. Raimondo
Secretary
Department of Commerce
1401 Constitution Ave, N.W.
Washington, D.C. 20230

Re: Project Finance
ETTAC Recommendation 2021-09

Dear Secretary Raimondo:

The Environmental Technologies Trade Advisory Committee (ETTAC) is a federally-established committee whose purpose is to advise on the policies and procedures of the U.S. government that affect environmental technologies, goods, and services exports.

ETTAC recommends that United States government agencies that provide assistance regarding project financing of environmental projects in other countries, including the Treasury Department, the Development Finance Corporation, and the Export-Import Bank, support clarity, transparency, and best practices for project finance of solid waste projects. The U.S. government's engagement in developing nations to facilitate and shape solid waste policy and the impacts it has on the environment, economy, and economic development is critical for meaningful participation by U.S. companies providing solid waste management goods and services across technologies. This guidance should include fundamentals including the need for consistent, convenient access to solid waste and recycling collection programs at affordable rates with actionable milestones and deadlines.

Sustainable solid waste management technologies and systems including waste-to-energy facilities, landfills and recycling can each have a positive impact beyond the climate benefits of advanced solid waste management. They also can provide renewable energy sources, while mitigating or reducing methane emissions. The benefits of these facilities are significant and can help developing economies achieve greater, sustained climate reductions while building critical and resilient municipal infrastructure.

A key component in delivering sustainable solid waste management projects, is the availability and utilization of project finance as the primary debt financing tool. Based on experience financing solid waste projects and review of project finance feasibility issues, it is evident that successful projects will need to address and fulfill a number of key criteria. These criteria include:

- **The provision of a clearly defined legislative and contractual risk allocation for the duration of the concession agreement.** Successful project finance relies on the clarity of the underlying contracts/concessions more than any other type of finance. This reality is because the primary security of project finance lenders is endowed by the rights afforded by the relevant concession and project contracts. In addition to contractual clarity, the credit behind governmental entities' contractual undertakings is of high concern to US companies and their lenders. Acceptable credit enhancement could take one of several forms, including a guaranty of performance from another governmental entity with a higher credit rating.

- **The provision of a direct agreement between the key public sector counter parties and the project finance lenders**. In limited recourse/non-recourse project finance, the principal form of security for the lenders for developer default is to have a direct agreement with the key public sector counterparty(s) which sets out a process whereby the lenders can assess and step-in to rescue a project prior to the procuring authority exercising its rights to terminate the concession and related agreements.
- **An exhaustive list of events which may lead to withdrawal of the concession agreement.** These events need to be capable of withstanding objective evaluation, thereby ensuring that withdrawal is regarded by all parties as an proportionate response to the relevant event, given the level of equity and debt finance that will be committed to the project. Similarly, the relevant remedial rights and associated rectification periods should be clearly defined in order to provide further certainty for all concerned.
- **Provisions allowing for compensation upon termination of the concession agreement following: (i) Key public sector counterparty default; (ii) concession holder default; (iii) force majeure termination; and (iv) planning/permitting/consent failure termination.** Lenders will be keen to ensure that the compensation is payable in these circumstances to reflect benefits that have resulted to date from the provision of project finance debt.
- **A detailed list of "supervening events" that will provide relief from liability and termination for poor performance during construction and operations.** Such events would include storms, bursting pipes/tanks, earthquakes, utility company failure, power or fuel shortages, blockades/embargoes, strikes, loss of goods/materials and others typically seen in project financings for waste projects. Supply chain disruptions resulting from the COVID-19 pandemic fall into this category.
- **Protections against future unforeseeable changes in law or to the concession agreement given the proposed duration of the concession agreement.** This is typical for infrastructure project financings where changes in law could have a significant impact, including on the underlying operating costs of the project.
- **In the event a governmental entity is not the counterparty to a solid waste-related agreement, clarity concerning how the concession and related contracts will deal with circumstances where the counterparty is no longer able to perform as purchaser of the energy under the agreement (for example, because the counterparty's concession has expired or been withdrawn).**
- **Confirmation as to the exclusivity over waste to be granted to the project developer and the extent to which minimum tonnages of waste will be provided by the government counterparty under any proposed structure.**

Thank you for your consideration of this recommendation.

Sincerely,

William Decker
ETTAC Chair