

## RFP Protocol

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## **I. Introduction**

This RFP Protocol describes the process of administering the RFP and specifies how the Independent Evaluator (“IE”) will communicate with bidders, with representatives of PECO Energy Company (“Company” or “PECO”), and with the Staff of the Pennsylvania Public Utility Commission (“Commission” or “PUC”). The RFP Protocol is focused on specific procedures that the IE and PECO will follow. The following topics will be covered:

- General Principles
- Confidentiality
- Web Site and Data Room
- Frequently Asked Questions
- Announcements & Communications to Bidders
- Information Sessions
- Guaranty Process
- Processing of Proposals
- Market Report
- Bid Processing
- Post-Bid Procedures
- Calendar

## **II. General Principles**

The main guiding principle of this RFP Protocol is that all bidders will be treated equally. This equality means that no bidder will be provided with information that is not available to all other bidders, and all bidders will be subject to the exact same rules and standards for participation. This not only ensures fairness of the process but it also fosters competition and so favors the best final prices possible. Bidders are more willing to participate in the RFP if they know that no other bidder will be granted an advantage over them.

Furthermore, information that is of a sensitive nature, such as information a bidder provides about itself during the proposal process and information about individual bidders’ bids, shall be considered confidential and will not be released to the public. As stated in the PUC’s Policy Statement at §69.1807(8):

“[t]he public interest would be served by the adoption of uniform rules for the confidentiality of competitive solicitation information. Supplier participation, bid prices, and retail rates may be impacted by protecting certain information, including, the identity of winning and losing bidders, the number of bids submitted, bid prices, the allocation of load among winning bidders, and the like.”

PECO and the IE are committed to upholding these principles, and to that end:

- The IE and PECO will nominate particular individuals who will review RFP information. Each nominated individual signs a Confidentiality Statement. The individual may only discuss the RFP information to which it has access with other nominated individuals. Information will be provided to Staff at critical junctures.
- The IE will serve as the sole interface with bidders.
- The IE will set up a public RFP Web site to disseminate information and data about this RFP efficiently and to which all stakeholders will have access.

### **III. Confidentiality**

This RFP Protocol describes the extent of the communication between the IE and PECO. Information not specifically designated in this protocol for communication between the IE and PECO shall not be communicated, and shall be treated as confidential. All PECO and NERA personnel involved in the administration of a solicitation will sign the Confidentiality Statement provided as Appendix 10 of the RFP, ensuring that all information submitted by prospective suppliers through this process will be treated as confidential. This RFP Protocol describes what information can be released, to whom and under what circumstances.

PECO and the IE will each designate specific individuals that will take part in the implementation of the Default Service Program.

- These individuals will sign the Confidentiality Statement provided as Appendix 10 of the RFP and will commit to strictly adhere to the RFP Protocol.

- The IE will maintain a master list of individuals who can have access to confidential information and each individual on that list can only discuss confidential information with another individual on that list.

PECO will have a supporting role during the implementation of each solicitation, consisting primarily of the following:

- Development of data that the IE then posts to the RFP Web site and updates as necessary;
- Response to bidder inquiries, particularly on data methodology and the Default Service SMA, after the IE has redacted the identity of the questioner;
- Review with the IE of financial information provided by bidders with their qualification package to determine the credit line that would prevail under the terms of the Default Service SMA;
- Review additional documents provided by bidders that are qualifying under an agency agreement, or as foreign entities, or relying on the financial standing of a foreign entity;
- Prepare the Default Service SMA including the guaranty for execution by each bidder;
- Review with the IE of modifications to credit instruments proposed by bidders (once the IE has redacted the identity of the prospective supplier) to determine whether the modifications are non-material in nature;
- Review with the IE of alternate guaranty forms to determine whether the alternate guaranty form provides the same protection as the standard Form of Guaranty;
- Review with the IE of bid security (once the IE has redacted the identity of the bidder and the amount) to determine whether the bid security instruments follow the standard formats or only include approved changes.

In addition, and assuming the Commission approves the results of a solicitation, the IE will provide PECO with the information necessary to administer the winning contracts, namely the identity of the approved suppliers, the amount that they will supply of each product, and the supplier-specific price for each product (which is the average of the supplier's approved bids for that product). Other than the information that it needs to administer the contracts, PECO will not have access to confidential information that is bidder-specific. Notably, PECO will not be provided with information concerning losing bids. The Commission's regulations at §§54.186(c)(5) specifically provide as follows:

“The bids submitted by a supplier in response to a competitive bid solicitation process shall be treated as confidential pursuant to the confidentiality agreement approved by the Commission pursuant to §§ 54.185(D)(6). The DSP, the Commission, and a third party involved in the administration, review or monitoring of the bid solicitation process shall be subject to this confidentiality provision.”

#### **IV. Web Site and Data Room**

A web site dedicated specifically to the RFP is the most efficient way for the IE to disseminate information to bidders and other stakeholders. The RFP Web site will be public, and anyone can access the site at any time and find any information they require simply by searching the RFP Web site instead of calling or emailing the IE. No password or login information will be required to view the RFP Web site.

The RFP Web site will contain a section where any visitor may register by submitting information such as name, phone number and email address. Any user who submits an email address will be signed up to receive updates via email from the IE.

The RFP Web site will allow stakeholders to download all key documents as soon as these become available. Such documents include the RFP itself, the Default Service SMA, and the qualification materials that bidders will need to submit (e.g., proposal forms and standard templates for pre-bid security). These documents will be posted well in advance of the qualification deadlines, as bidders will need ample time to review them internally and familiarize

themselves with the rules and requirements so that they can accurately represent their ability to comply with the qualification and contract criteria. RFP Web site will also include a calendar providing the deadlines for each solicitation. All deadlines for the first solicitation of the RFP will be made public at the initial launch of the RFP Web site, giving suppliers as much time as possible to prepare for the process. The launch of the RFP Web site is currently scheduled for March 2009, over six months before bids in the first solicitation are due. A calendar is provided in the RFP, in Article II of the RFP Rules as well as in Appendix 2 of the RFP. In addition, an annotated calendar containing the deadlines and milestones for the first solicitation is included in Section XV of this protocol.

The RFP Web site will include a data room to assist bidders in assessing the RFP opportunity. This data room will include data that would be useful for providers in assessing the load associated with each product, such as historical load by class, switching statistics, etc. Data would be provided as early as possible, for the same reason the RFP documents should be provided early in the process: bidders need time to analyze the data, to make their own assessment about their ability to serve load for a given class of customers and term, and to assemble the wholesale products for doing so.

In addition to allowing bidders to assess their ability to serve different products, the provision of data via the RFP Web site also has the effect of leveling the playing field for all bidders; without the provision of data, some bidders may have a better idea of the load associated with PECO's customers, and this puts bidders without such familiarity at a competitive disadvantage. Therefore, providing data on an equal basis to all bidders equalizes knowledge across prospective suppliers, and spurs competition in areas where some bidders might not otherwise have the ability to offer competitive bids. This is in keeping with the guiding principle of equality described at the beginning of this protocol.

Providing data to bidders will require advance planning. PECO and the IE would determine which data would be posted to the web site, or whether data should be provided on a confidential basis to qualified participants. Confidential data can expand the information provided, but at the cost of setting up a password-protected section of the web site or of providing data through mailings only to qualified parties, and at the possible cost of monitoring access to the data. At this point in time, PECO does not anticipate the need to provide data on such a confidential basis, but will be able to do so if the need arises.

PECO and the IE will determine in advance the frequency with which data will be updated on an ongoing basis and will announce this schedule of data updates to bidders. Initial data series are scheduled to be provided by March 16, 2009 and will include as long a historical period as possible. As the RFP process unfolds, more current data may become available and such data would be posted to the RFP Web site. PECO will endeavor to update load data on a monthly basis.

The procedure for the monthly updates of the data series on the RFP Web site will be as follows:

1. PECO will provide the updated data to the IE at least three days in advance of the scheduled monthly update;
2. The IE will check the data, ensuring that it is accurate and error-free, contacting PECO if necessary to resolve any issues;
3. The IE will post the updated data series to the RFP Web site.

The following data will be available on the RFP Web site:

- hourly usage data;
- number of retail customers;
- capacity peak load contribution (“PLC”);
- historical monthly retention figures;
- estimated loss factors;
- customer size distributions.

Subsequent to the launch of the RFP Web site and data room, the IE will solicit comments from prospective suppliers on the form and nature of the data provided. To the extent that it is feasible, these comments will be incorporated and additional data that may be requested will be provided. The IE will discuss the comments with PECO without revealing the identities of any of the commenting parties.

The material on the RFP Web site will be updated when new content becomes available that would be of use to stakeholders. The process for updating the RFP Web site and adding new material will be as follows:

1. PECO and the IE will together prepare the material for posting, ensuring that it is accurate and error-free;
2. The IE will post the new documents to the RFP Web site;
3. The IE will send an announcement (via email) to registrants informing them of the newly available content on the RFP Web site.

## **V. Frequently Asked Questions**

The RFP Web site will also contain a web-based form that stakeholders can use to submit questions, and a section where the IE would post questions received and the associated responses, in order to ensure equal distribution of information. This FAQ form will be available for all stakeholders to ask questions and receive answers, although in times of high demand, priority may be given to answering questions from prospective suppliers. There are four major steps to the process.

In the first step, the question is received and the IE sends an acknowledgement to the questioner. The acknowledgement serves as a bidder's confirmation that its question has been received, and the acknowledgement will also inform the bidder of the expected turnaround time for an answer, expected to be two business days. In the second step, the IE drafts an answer to the question, consulting PECO for expertise as necessary. If PECO is consulted, the identity of the entity who has asked the question is not revealed, and any information in the question itself that could potentially identify the questioner is removed before sending to PECO.

Once an answer has been finalized by the IE (and PECO if necessary), the IE sends the final response directly to the questioner. If there is any delay in answering the question, such that the answer cannot be sent before the end of the expected turnaround period, the IE will send a delay notice to the questioner informing it of the delay and of a revised expected turnaround time for the answer. In the final step, questions and answers that were received during the previous week are posted to the Frequently Asked Questions (FAQ) section of the RFP Web site by the IE.

Posting the questions to the RFP Web site ensures an equal distribution of information among stakeholders – any information that is conveyed to one party via an answer to a question

submitted through the RFP Web site is then conveyed to all stakeholders in a public manner through the FAQ section of the RFP Web site. This practice ensures that all bidders have the same information and can compete on an equal playing field. Any question received by a party other than the IE must be sent to the IE for processing – no party other than the IE will directly answer a question from a stakeholder. Because all questions received about the RFP must go through the IE, bidders know that all questions receive the same treatment; as specified in the guiding principles of this RFP Protocol, the IE is the sole interface with bidders.

It is expected that the FAQ section of the RFP Web site will be updated once per week, allowing for more frequent posts at times of high volume or less frequent posts due to holidays.

## **VI. Announcements & Communications to Bidders**

As specified in Section IV, postings of new information to the RFP Web site will be followed by an announcement made to all registrants to the RFP Web site. (The only exception will be for data postings that have been scheduled to occur on the same day each month.) The IE and PECO may also issue announcements to a list of registrants to the RFP Web site from time to time to remind prospective suppliers of deadlines or to make them aware of events that may impact the bids. Announcements will include the following milestones:

- Initial documents posted
- Due dates for the Guaranty Process
- Part 1 Proposal Window opening & closing
- Information Sessions reminders
- Part 2 Proposal Window opening & closing
- Bids due
- PUC decision on RFP results

The goal of these announcements is to ensure that all bidders and stakeholders are aware of the ongoing progress of the RFP, and to minimize the possibility that a potential bidder is unable to bid in the RFP due to a missed deadline.

The IE will also engage in direct marketing to promote the RFP opportunity. Members of the IE team will compile a list of prospective suppliers using publicly available information and contact representatives of these entities to inform them of key dates in the RFP, and opportunities for them to gain more information about participation in the RFP, such as information sessions and the RFP Web site. All prospective suppliers reached during these marketing calls will receive the same public information.

## **VII. Communications to the Press and the Media**

The IE and PECO may also issue press releases or advertisements in order to promote the RFP opportunity. Information placed in the trade press has the ability to reach prospective suppliers that might not have been contacted otherwise, and might not have registered to the RFP Web site of their own volition; thus, more parties may be made aware of the initial launch of the RFP Web site, and more participation may be achieved for the bidder information sessions. The IE and PECO will work together to draft these communications. The IE and PECO will issue the press release, and contact information of a team member of the IE will be included in case additional information is required.

PECO may grant interviews to the press or respond to press inquiries concerning the RFP. The interviews and responses to press inquiries are limited to public information regarding the RFP. PECO may require that the IE, who is to provide support in promotion efforts, participate in interviews and press inquiries. PECO has complete discretion to provide its customers and security analysts with public information regarding the RFP. PECO has complete discretion to provide public information to utilities or regulators from outside Pennsylvania.

The IE will coordinate with PECO's press representatives on all media contacts before the RFP. The IE will coordinate with PECO before granting interviews or commenting on any aspect of the RFP. Notwithstanding this, the IE will answer routine inquiries from the press and will inform PECO of such inquiries (e.g., wanting to know where a document is on the RFP Web site).

## VIII. Information Sessions

In addition to the electronic information dissemination methods via the RFP Web site, email, or through press releases, in-person information sessions are effective for presenting efficiently and concisely the main elements of the RFP. Such information sessions also have the significant benefit of allowing bidders to ask questions directly of the IE and PECO.

The first information session is scheduled to occur on April 24, 2009, soon after the PUC's decision on the RFP, and approximately five months prior to the Bid Date. The session will be tailored to parties considering participation in the RFP, and will cover a broad range of general topics about the opportunity. The aim is to provide a wealth of information quickly, so that potential bidders can begin their own evaluation of the opportunity. Subject material will consist of the general structure of the RFP, the definition of the products available, and an introduction to the RFP Web site and communication channels by which interested parties can obtain further information throughout the process. This initial information session will not go into great detail about the mechanics of bidding, but will encourage firms who could potentially serve load to familiarize themselves with the process.

The IE will prepare and deliver the presentation at the information session, with representatives of PECO on hand to answer questions if necessary. PUC staff is invited to attend the session. The IE will take down all questions asked and answered at the information session and post them to the RFP Web site as Frequently Asked Questions, so that bidders who are unable to attend the information session have access to the same information as bidders able to attend. Similarly, the presentation given at the information session will be made available on the RFP Web site after the session. The session is aimed at potential bidders only and no information about the parties in attendance at the session will be made public. If PECO and the IE determine that it is beneficial and feasible to host a webcast of the information session in addition to or in lieu of the in-person session, they may do so.

Two more information sessions will be held. The second information session will be held shortly before the opening of the Part 1 Window, to inform potential bidders about the requirements of the RFP, and to familiarize them with the rules for the submission of proposals. The third information session will be held shortly before the Bid Date and will be a training

session on the mechanics of submitting bids on the Bid Date. As with the first information session, these later sessions will be limited to bidders; questions from the sessions will be posted as FAQs and no attendance information will be made public.

As bidders become familiar with the process, the IE and PECO may hold fewer information sessions for future solicitation, or may limit the information sessions to be webcasts in lieu of in-person sessions. The IE and PECO expect that, for each solicitation, there would be at least an information session prior to the due date for submission of Part 1 Proposals, and a subsequent training session held for bidders who are qualified to submit a Part 2 Proposal.

## **IX. Guaranty Process**

PECO will allow any prospective supplier to submit for consideration an alternate guaranty form that the prospective supplier uses in its normal course of business. PECO will also allow any prospective supplier to propose modifications to the standard Form of Guaranty that are non-material in nature. A separate and more detailed document about the Guaranty Process is included as Appendix 3 of the RFP. This document specifically provides the specific minimum requirements of any alternate guaranty form.

The protocol for the processing of the alternate guaranty forms will occur in the following steps:

1. Parties submit alternate guaranty forms by mailing hard copies of the form and all relevant documentation (as specified in the Guaranty Process document) to the IE office.
2. The IE acknowledges receipt of the package by sending a fax to each prospective supplier. The fax notes whether all required materials have been received. If there is time before the deadline, a prospective supplier submitting incomplete documentation will be given an opportunity to complete its submission.
3. The IE redacts all information that could identify the prospective supplier submitting the alternate guaranty form and provides the redacted form and other documentation to PECO electronically.
4. PECO evaluates the alternate guaranty package with the assistance of the IE and of outside counsel as necessary.

- a. If the package is acceptable, the IE sends a fax to the prospective supplier informing it of the form's acceptability for use under the Default Service SMA.
  - b. If the package is unacceptable, the IE sends a fax to the prospective supplier informing it of what must be changed in order for the package to be acceptable for use under the Default Service SMA.
5. Prospective suppliers that submit revised alternate guaranty packages mail hard copies of the revised documents to the IE office.
  6. The IE redacts all information that could identify the parties submitting the revised packages and provides the redacted material to PECO electronically.
  7. PECO evaluates with the assistance of the IE and of outside counsel as necessary.
    - a. If a revised package is acceptable, the IE sends a fax to the prospective supplier informing it of the form's acceptability for use in the RFP.
    - b. If a package is unacceptable, the IE sends a fax to the prospective supplier informing it of the form's final rejection for use in the RFP and the reasons for the rejection.
  8. Accepted forms are kept on file by the IE, as they will be acceptable for use in future solicitations under the RFP.
  9. A prospective supplier submits the executed alternate guaranty form and the signed enforceability opinion with the Part 2 Proposal.

An alternate guaranty form approved through this process will be acceptable to PECO. This alternate guaranty form may be used for purposes of the Fall 2009 solicitation and may be used for the first three solicitations (through spring 2010) barring changes in the applicable law or changes to the RFP process as may be ordered by the PUC.

The protocol for processing proposed modifications to the standard Form of Guaranty will occur in the following steps:

1. Prospective suppliers submit a draft guaranty electronically, in Microsoft Word with tracked changes, saved to a CD and sent to the IE Office, or emailed to the IE at XXX.com.
2. The IE acknowledges receipt of the materials by sending a fax to each submitting prospective supplier.

3. The IE redacts all information that could identify the prospective supplier submitting the draft guaranty and provides the redacted draft guaranty to PECO electronically.
4. PECO evaluates the draft guaranties with the assistance of the IE and of outside counsel as necessary.
5. The IE sends a fax to the prospective supplier informing it of whether the proposed modifications are acceptable for use under the Default Service SMA.
6. Accepted modifications are kept on file by the IE, as they will be acceptable for use in future solicitations under the RFP.
7. The RFP prepares in a single document that contains all acceptable modifications and posts the document to the RFP Web site. All modifications accepted to the standard Form of Guaranty for the benefit of a single prospective supplier will be made available to all prospective suppliers using the standard Form of Guaranty on an optional basis.

## **X. Processing of Proposals**

A proposal consists of three (3) parts. The Part 1 Proposal is the bidder's response to the qualification standards described in Article IV of the RFP Rules. Bidders that qualify pursuant to a successful Part 1 Proposal may submit the second part of the Part 2 Proposal. The Part 2 Proposal, described in detail in Article V of the RFP Rules, includes the signed Default Service SMA and financial support for the bidder's offers. Bidders that present a successful Part 1 Proposal and Part 2 Proposal may submit the third part of the Proposal, which consists of the bidder's bids.

Part 1 and Part 2 Proposals will be received and processed by the IE, with certain specified decisions and evaluations made by PECO with the assistance of the IE. The IE will be the main party responsible for processing the proposals and bids. This section lays out the step-by-step procedures to be followed and time periods for each action to be taken.

Prospective suppliers submit Part 1 proposals during the Part 1 Window (August 25, 2009 - September 1, 2009 for the Fall 2009 solicitation). Any information provided by a bidder in its Part 1 Proposal is provided on a confidential basis to the IE, and may be provided on a confidential basis to PUC Staff. PECO representatives and the IE will review the information provided to fulfill the financial requirements and determine the Default Service SMA. PECO

representatives and the IE will review draft documents provided to comply with specific requirements for bidders submitting a proposal under an agency agreement, and draft documents provided to comply with specific requirement for foreign bidders or for bidders relying on the financial standing of a foreign entity.

Bidders that qualify pursuant to a successful Part 1 Proposal may submit a Part 2 Proposal. Bidders submit Part 2 proposals during the Part 2 Window (September 8, 2009 - September 15, 2009 for the Fall 2009 solicitation). Any information provided by a bidder in its Part 2 Proposal is provided on a confidential basis to the IE, and may be provided on a confidential basis to the PUC Staff. PECO representatives will review the pre-bid letter of credit with the name of the bidder and the amount redacted and will participate in the evaluation of this pre-bid letter of credit. PECO representatives and the IE will determine the sufficiency of documents provided to comply with specific requirements for bidders applying under an agency agreement, and documents provided to comply with specific requirement for foreign bidders or for bidders relying on the financial standing of a foreign entity.

Communication regarding a bidder's proposal occurs between the IE and the bidder's designated representative or named officer.

#### **A. Part 1 Proposals**

In the Part 1 Proposal, applicants submit basic information, such as the name of the applicant and contact information. The officer of the bidder named in the Part 1 Proposal will designate a representative as a point of contact for purposes of the RFP and will make a number of certifications regarding its participation in the RFP as well as provide information required by the Part 1 Proposal.

#### **1. Receipt and Processing of Part 1 Proposals**

- All materials for the Part 1 Proposals must be received by 12:00 PM (noon EPT) on the Part 1 Date.
- The Part 1 Form arrives at the IE office. The proposal can be delivered by certified mail, registered mail, hand delivery, or overnight delivery service.

- The package is opened. The package should contain three original completed Part 1 Forms and one copy of all relevant attachments.
- If the Part 1 Proposal arrives before noon on any business day during the Part 1 Window, the IE sends the acknowledgment confirming receipt on the day the Part 1 Proposal is received with the results of an initial review. If a Part 1 Proposal arrives after noon on any business day during the Part 1 Window prior to the Part 1 Date, the IE sends the acknowledgment along with the initial review by noon of the next business day.
- If the proposal arrives after the Part 1 Date:
  - The Part 1 Proposal is rejected and the IE informs the bidder by fax.
  - The IE returns one (1) copy of the Part 1 Form by overnight delivery service along with the rejection notice.
  - A copy of the letter is filed along with an original proposal and supporting documents. These are kept in the IE office.
- If the proposal arrives in time, the IE reviews the proposal and makes a determination of the completeness of the proposal and provides to the bidder the results of its initial review. The initial review states either that the Part 1 Proposal is complete and is being considered, or the initial review lists items of the Part 1 Proposal that are deficient or require clarification.
- If the proposal is missing required information, or requires clarification, a fax listing all information and documents required to complete the proposal is prepared by the IE and sent to the bidder.
  - The bidder has until noon on the Part 1 Date, or until 6:00 PM on the business day following the business day during which such a notice is faxed to the bidder, whichever comes later, to respond.

- If the information and documents required to remedy deficiency(ies) are submitted within the time allowed, the IE reconsiders the proposal.
- If the required information is not submitted within the time allowed, the proposal is incomplete. The Part 1 Proposal is rejected and the IE informs the bidder by fax. The IE returns one (1) copy of the Part 1 Form by overnight delivery service along with the rejection notice. A copy of the letter is filed along with an original proposal and supporting documents. These are kept in the IE office.
- The Part 1 Proposal allows the bidder to submit non-material modifications to the standard form of the pre-bid letter of credit and the post-bid letter of credit. If such a submission is received:
  - The IE will redact identifying information from the document and provide the redacted version to PECO for review.
  - PECO and the IE will evaluate the submission.
  - The IE will communicate the results of the review to the bidders in the specified timeframe.
  - All such modifications related to the standard form of the pre-bid letter of credit and the post-bid letter of credit will be posted in a single document on the RFP Web site.
- Bidders submitting a proposal under a number of specific special circumstances are requested to submit additional documents with their Part 2 Proposals. Any such bidder can submit draft documents with its Part 1 Proposal. These include bidders submitting a proposal under an agency agreement, foreign bidders, and bidders relying on the financial standing of a foreign entity. The IE will take the following steps for the evaluation of any such documents.

- The IE will redact identifying information from the document and provide the redacted version to PECO for review.
- PECO will review the document with the assistance of the IE and the IE will communicate the results of the review to the bidder with the Part 1 Notification.
- The financial documents submitted by all bidders that accompany the Part 1 Proposals will be provided to PECO. PECO representatives will meet the IE at the IE office on the Part 1 Date. It is expected that the creditworthiness evaluation will take no more than a day. The following steps will occur:
  - The IE will provide to PECO a spreadsheet that contains the names of the applicants and their guarantors;
  - PECO will make a determination of the creditworthiness of the applicants and their guarantors, with the IE assistance;
  - The credit assessment of the applicants and their guarantors is entered into the spreadsheet.

## **2. Preparation of Default Service SMA Documents by PECO**

The IE provides PECO with the section of the Part 1 Proposals that contain information and elections necessary for preparing the Default Service SMA documents. PECO, with the assistance of the IE, prepares the Default Service SMA, including all necessary exhibits. If the bidder has named a guarantor, PECO also prepares the guaranty with the assistance of the IE.

Within two (2) business days of the Part 1 Notification Date, the IE sends by overnight delivery service the Default Service SMA, including all necessary exhibits to each bidder that qualified pursuant to a successful Part 1 Proposal. The Default Service SMA is provided electronically on a CD. The bidder prints and provides two (2) signed originals of the Default Service SMA for inclusion with its Part 2 Proposal.

### 3. Notification for Part 1 Results

- All prospective suppliers for which a rejection notice is needed will have been identified and the rejection notice prepared. The IE informs the bidder by fax. The IE returns one (1) copy of the Part 1 Form by overnight delivery service along with the rejection notice. A copy of the letter is filed along with an original proposal and supporting documents. These are kept in the IE office.
- For each prospective supplier that qualifies under the requirements of the Part 1 Proposal, the IE sends a Part 1 Notification. This letter also details the creditworthiness assessment. The IE provides the Part 1 Notification initially by fax.
- Within two (2) business days of the sending of the fax, the IE sends by overnight delivery service the Part 1 Notification, a record of the contact information as well as a CD to which are saved: (i) the Default Service SMA, including all necessary exhibits as prepared by PECO and the IE; (ii) the Bid Form and instructions for submission of bids; (iii) instructions for filling out and encrypting the Bid Form; (iv) instructions for the electronic transfer of the completed Bid Form from the bidder to the IE; (v) instructions for fax submission of the bids in case of technical difficulties with the electronic transfer; (vi) invitation to a training session on the bid submission process; (vii) a username, a password, and security codes to be used for bid submission uniquely by that bidder; and, for an bidder that relies on the financial standing of a guarantor, (viii) the guaranty.
- It is expected that the evaluation of proposals will take no longer than three days; for the Fall 2009 solicitation, the close of the Part 1 Window is September 1, 2009 and the Part 1 Notification Date is September 4, 2009.
- One copy of the Part 1 Proposal is stored off-site.

## **B. Part 2 Proposals**

In the Part 2 Proposal, bidders fulfill the requirements specified in Article V of the RFP Rules, including providing the signed Default Service SMA and financial support for the bidder's offers.

### **1. Receipt and Processing of Part 2 Proposals**

- All materials for the Part 2 Proposals must be received by 12:00 PM (noon EPT) on the Part 2 Date.
- The Part 2 Proposal arrives at the IE office. The proposal can be delivered by certified mail, registered mail, hand delivery or overnight delivery service.
- The Part 2 proposal consists of three original Part 2 Forms, the executed pre-bid letter of credit, two (2) executed Default Service SMA including all necessary exhibits, and one hard copy of any other document requested of the bidder in the Part 2 Form and in Article V of the RFP Rules. A bidder relying on the financial standing of a guarantor must provide two (2) originals of the signed guaranty. Bidders submitting a proposal under an agency agreement, foreign bidders, and bidders relying on the financial standing of a foreign entity submit additional documents as specified in Article V of the RFP Rules.
- If the Part 2 Proposal arrives before noon on any business day during the Part 2 Window, the IE sends the acknowledgment confirming receipt on the day the Part 2 Proposal is received with the results of an initial review. If a Part 2 Proposal arrives after noon on any business day during the Part 2 Window prior to the Part 2 Date, the IE sends the acknowledgment along with the initial review by noon of the next business day.
- A copy of all security documents is made. Original security documents are stored in a safe in the IE office.
- If the proposal arrives after the Part 2 Date:

- The Part 2 Proposal is rejected and the IE informs the bidder by fax.
- The IE returns one (1) copy of the Part 2 Form and all documents except for the pre-bid letter of credit by overnight delivery service along with the rejection notice.
- A copy of the letter is filed along with an original proposal and supporting documents. These are kept in the IE office.
- If the proposal arrives in time, the IE reviews the proposal and makes a determination on the completeness of the proposal and provides to the bidder the results of its initial review. The initial review states either that the Part 2 Proposal is complete and is being considered, or the initial review lists items of the Part 2 Proposal that are deficient or require clarification.
- Review of the pre-bid letter of credit as well as documents provided for bidders submitting a proposal under an agency agreement, as foreign bidders, or while relying on the financial standing a guarantor may be part of an initial review or may be provided separately the next business day.
- If the proposal is missing required information, or requires clarification, a fax listing all information and documents required to complete the proposal is prepared by the IE and sent to the bidder:
  - With the exceptions noted below, the bidder has until noon on the Part 2 Date, or until 6:00 PM on the business day following the business day during which such a notice is faxed to the bidder, whichever comes later, to respond.
  - For deficiencies related the pre-bid letter of credit, or the guaranty, or documents provided to comply with specific requirements for bidders applying under an agency agreement, and documents provided to comply with specific requirement for foreign bidders or for bidders relying on the

financial standing of a foreign entity, the bidder will have until noon on the Part 2 Date, or until 6:00 p.m. of the second business day following the business day during which the bidder is notified, whichever comes later, to respond.

- If the information and documents required to remedy deficiency(ies) are submitted within the time allowed, the IE reconsiders the proposal.
- If the required information and documents are not submitted within the time allowed, the proposal is incomplete. If the Part 2 Proposal is rejected, the IE notifies the bidder of that fact by fax and by overnight delivery service. The IE returns one (1) copy of the Part 2 Form and all documents except for the pre-bid letter of credit.
- All bidders submit an executed pre-bid letter of credit with their Part 2 Proposals. If the bidder is relying on the financial standing of a guarantor, the IE confirms that the amount of the pre-bid letter of credit and the amount of the guaranty are consistent. If they are not, the IE requests a modification to the amount of the guaranty. The IE and PECO review the pre-bid letter of credit to ensure that it either uses the standard form or that it includes only approved modifications. The following steps will occur:
  - IE redacts all information that could identify the applicant from the pre-bid letter of credit prior to providing it electronically to PECO for review.
  - PECO will check that the forms of the pre-bid letters of credit are acceptable with the assistance of the IE. The IE and PECO undertake a daily review via conference call during the Part 2 Proposal Window to review the pre-bid letters or credit as they arrive.
  - If the pre-bid letter of credit requires revision, the IE prepares a deficiency notice informing the bidder of how its pre-bid letter of credit is deficient

and what it must do to remedy the deficiency(ies). This letter is faxed to the bidder.

- If a new/amended pre-bid letter of credit is submitted, a copy is made, is redacted, and the IE confirms whether the new pre-bid letter of credit follows the instructions of the deficiency notice. The IE consults PECO as needed by conference call. If the new pre-bid letter of credit does not follow the requirements, the bidder will not be allowed to submit bids.
- Bidders in special circumstances provide additional documents with the Part 2 Proposal. This is the case for bidders applying under an agency agreement, documents provided to comply with specific requirement for foreign bidders, and for bidders relying on the financial standing of a foreign entity. The sufficiency of these documents is evaluated by PECO and the IE. For each of these documents submitted:
  - The IE and PECO meet daily via conference call during the Part 2 Proposal Window to evaluate these documents as they arrive. PECO and IE determine the sufficiency of the documents provided.
  - If the document(s) requires revision, the IE prepares a deficiency notice informing the bidder of how its document(s) is deficient and what it must do to remedy the deficiency(ies). This letter is faxed to the bidder.
  - If a bidder had submitted draft of these documents with its Part 1 Proposal for review and if the bidder conforms these documents submitted with the Part 2 Proposal to the review provided during the assessment of the Part 1 Proposal, then these documents will automatically be considered sufficient.
  - If a new/amended document(s) is submitted, the IE confirms whether the new document(s) follows the requirements of the deficiency notice. The IE consults PECO as needed by conference call. If the new document(s)

does not follow the requirements, the bidder is not allowed to submit bids, or is not be granted unsecured credit under the terms of the Default Service SMA, or is not allowed to rely on the financial standing of the guarantor.

**2. Notification for Part 2 Results**

- All applicants for which a rejection notice is needed will have been identified and the rejection notice prepared. If a Part 2 Proposal is rejected, the IE notifies the bidder of that fact by fax and by overnight delivery service. The IE returns one (1) copy of the Part 2 Form and all documents except for the pre-bid letter of credit.
- A bidder that submits a Part 2 Proposal will be notified whether it has qualified to submit bids no later than 6:00 PM on the Part 2 Notification Date. This Part 2 Notification letter will be faxed to the bidder and will be sent to the bidder by overnight delivery service.
- It is expected that the evaluation of proposals will take no longer than three days; for the Fall 2009 solicitation, the close of the Part 2 Window is September 15, 2009 and the Part 2 Notification Date is September 18, 2009.
- One copy of the Part 2 Proposal is stored off-site.

**XI. Bid Submission Training**

The IE will hold a training session for bidders to practice the bid submission process prior to the submission of bids. The principle of the training is to familiarize all bidders with the step-by-step procedure to submit bids so that they can be sure they understand the process in advance of the actual Bid Date, allowing them to submit their actual bids without being hampered by technical difficulties or procedural questions. The training session is scheduled to occur early during the Part 2 Proposal Window, and will allow only potential bidders who have submitted successful Part 1 Proposals to familiarize themselves with the process by which they will be allowed to submit bids pursuant to successful Part 2 Proposals.

The IE will conduct the training exactly as it would on the Bid Date, except that bids submitted through the training exercise will not be binding in any way. PUC Staff may monitor the training exercise. PECO is not involved in the bidder training, but may participate in a separate mock trial with the IE so as to understand the bid submission process.

The training exercise will occur as follows:

1. Bidders will be provided with information on how to participate in the training with their Part 1 Notifications, including information for the electronic transfer of the Bid Form specific to the training;
2. Bidders will fill out, encrypt, and transfer electronically their Bid Forms to the IE using the system that will be employed on the actual Bid Date, and during a specific timeframe set aside for the training;
3. The IE will receive, decrypt and evaluate the submitted forms for completeness; as it would on the actual Bid Date;
4. The IE will contact the bidders to inform them of the receipt of their practice Bid Forms, and whether or not the forms were filled out properly;
5. Bidders wishing to practice submitting bids using a backup method will be afforded the opportunity to do so.

## **XII. Market Report**

This report would provide visible market prices for components of the full-requirements product and provide the PUC with broad trends in the wholesale markets. If appropriate, the market report could also report the results of similar solicitations held in the State or in a comparable region.

- If desired, the IE will prepare a confidential report to the PUC detailing current market conditions affecting the products at the RFP.

- This report would be provided one week to ten days in advance of the Bid Date to the PUC on a confidential basis.

### **XIII. Bid Processing**

A bidder's bids must be received between 10:00 a.m. and noon on the Bid Date. The Bid Form, as provided to each bidder along with its Part 1 Notification, is the exclusive method for the submission of bids. The RFP Rules are the governing document regarding the processing of bids on the Bid Date. The steps of the process are as follows:

- The Bid Form must be filled out completely, encrypted, and transferred according to the instructions provided by the IE.
- A bidder submits its bids electronically, by transferring an encrypted Bid Form through a secure file transfer interface. The bidder must use a username and a password provided by the IE to access the secure interface. The bidder must use a security code provided by the IE to encrypt the file.
- A bidder that must resort to submitting its Bid Form by fax because of technical difficulties must follow the instructions provided by the IE for this contingency. These instructions will include a representative of the bidder phoning the IE to advise the IE of the use of a fax transmission to submit bids and to provide authenticating information.
- The IE checks the Bid Form received for consistency with the requirements of the RFP, including a verification that the pre-bid letter of credit is sufficient to cover the Bid(s) of each bidder. The IE contacts each bidder within 15 minutes of receipt of the Bid Form.
  - If the Bid Form is complete and consistently filled out, the IE acknowledges receipt of the Bid Form and states to the bidder that the Bid Form is complete and consistent with the requirements of the RFP.

- If the Bid Form received by the IE is incomplete or inconsistent, the IE acknowledges receipt of the Bid Form but advises the bidder of the information that must be added or modified. The bidder may correct and resubmit the Bid Form as long as the Bid Form is received between 10 AM and noon on the Bid Date. Otherwise, the bids are not evaluated.
- If the pre-bid letter of credit is insufficient to support the bids, the IE states that fact to the bidder. The bidder may correct and resubmit the Bid Form as long as the Bid Form is received between 10:00 AM and noon on the Bid Date. Otherwise, IE will modify the Bid Form as specified in the RFP Rules.
- Members of the IE communicating with bidders during the submission procedures use a script so as to minimize any disparity of information provided to bidders. All telephone conversations between the IE and bidders will be recorded.
- The bids supported by adequate financial guarantees will be evaluated on a price-only basis. The bids for each product will be ranked from lowest to highest price until all bids are ranked or until the number of bids that are ranked equals the number of tranches available for the product.
- The IE phones each bidder that has submitted bids by 6:00 PM on the Bid Date and identifies the bidder's bids that are being identified to the PUC as winning bids.
- If two or more bidders submit bids that are identical for a product, these bids will be considered "Tied Bids" at that price. The IE will use the tie-breaking procedure described in the RFP Rules.

The IE communicates with PECO and provides the average winning price for each product and whether the solicitation has purchased all available tranches. PECO will not have information regarding any bidder's specific bids.

## **XIV. Post-Bid Procedures**

### **A. PUC Decision**

The IE will present the results of each solicitation to the PUC on the relevant Bid Date in a confidential report to the PUC. This confidential report will include the winning bids determined during the evaluation. Following the submission of the report by the IE:

- The PUC will have one (1) business day to consider the report of the IE and to approve or reject each of the winning bids. If the PUC does not act within one (1) business day, the winning bids are deemed to be approved.
- The IE will notify all bidders that have approved bids. The IE provides to PECO the name of each approved supplier, and for each such supplier, the number of tranches won by the supplier and the supplier-specific price for each product. The supplier-specific price for a given product is the average of the supplier's approved bids for that product.
- If a bidder is not awarded tranche(s), the IE will return two (2) signed originals of the Default Service SMA, and the guaranty to the bidder within two (2) business days after the Bid Date.
- PECO is not provided with information concerning losing bids.

### **B. Execution of Transaction Confirmations**

Each approved supplier will have already submitted two (2) signed Default Service SMA with its proposal. All that will be necessary for the full execution of the Default Service SMA for the product(s) won by the approved supplier will be the execution of the Default Service SMA by PECO and the execution of the Transaction Confirmations. If the Commission approves the results of the solicitation:

- By the second business day after the Bid Date, PECO:

- executes each of the two (2) originals of the Default Service SMA, including all necessary exhibits.
- executes each of the two (2) originals of the guaranty provided by the bidder with its Part 2 Proposal, if the bidder is relying on the financial standing of a guarantor.
- By 12:00 PM (noon EPT) of the third business day after the Bid Date, PECO:
  - partially executes two (2) originals of each applicable Transaction Confirmation and faxes one (1) copy to the approved supplier.
- PECO will send by overnight delivery service to the approved supplier by the third business day after the Bid Date:
  - one (1) original of the fully executed Default Service SMA, including all necessary exhibits. The necessary exhibits are: the schedule for the Independent Credit Requirement (Exhibit B); the sample PJM invoice (Exhibit D); the Mark-to-Market exposure calculation methodology (Exhibit E); the form of Notice (Exhibit G); the Alternate Energy Portfolio Standards obligations (Exhibit H); and the PJM Declaration of Authority (Exhibit I).
  - one (1) original of the fully executed guaranty, if the bidder relies on the financial standing of a guarantor.
  - two (2) originals of the partially executed Transaction Confirmation(s).
- By the fourth business day after the Bid Date, the approved supplier:
  - executes each Transaction Confirmation and sends by fax one (1) copy of all Transaction Confirmations to PECO by 2:00 PM (EPT);

- fulfills all creditworthiness requirements under the Default Service SMA by 5:00 PM (EPT);
- sends one (1) original of each fully executed Transaction Confirmation to PECO by overnight delivery service.

**C. Return of Pre-Bid Security**

The IE plans to release the pre-bid letters of credit for all bidders no later than five (5) business days after the Bid Date. To ensure that the signed certificates of cancellation are returned to the bidder's bank as quickly as possible, the certificates of cancellation will be signed by PECO in advance of when the pre-bid letter of credit must be released and held by the IE. The time of release will depend on whether or not the bidder has won any products at the RFP and on the PUC's decision:

- If the Commission does not approve any of a particular bidder's bids, the IE will release that bidder's pre-bid letter of credit within two (2) business days after the Bid Date.
- If the Commission approves any of a particular bidder's bids, the IE will release that bidder's pre-bid letter of credit as soon as practical and no later than five (5) business days after the Bid Date.
  - PECO will notify the IE as soon as an approved supplier has returned the executed Transaction Confirmations.
  - The prompt return of bid security will also be conditioned upon the bidder not having violated any undertakings agreed to as part of the RFP.



**XV. Calendar and Summary**

Date	Decisions and Actions	Process Leaders	Process	PECO and Staff involvement and information
Spring 2009 (tentative)	Decision on PECO Default Service Program	PUC (1)		
3/16/2009	RFP Web Site and Data Room open	IE/PECO	<ul style="list-style-type: none"> <li>• PECO provides data and documents on methodology as necessary</li> <li>• IE ensures data uniformity</li> <li>• IE/PECO plan RFP Web site</li> </ul>	<ul style="list-style-type: none"> <li>• IE communicates additional bidder requests for data or documents to PECO</li> <li>• IE works with PECO to respond to data requests</li> </ul>
Ongoing	Questions from bidders are answered	IE/PECO	<ul style="list-style-type: none"> <li>• Bidders contact IE, IE answers questions, IE posts answers</li> <li>• Answers posted to web site will not contain information that could identify questioners</li> </ul>	<ul style="list-style-type: none"> <li>• IE contacts PECO for expertise as appropriate (information that could identify questioners is redacted)</li> </ul>
Ongoing	Announcements/communications to bidders/press releases	IE/PECO	<ul style="list-style-type: none"> <li>• All communications regarding upcoming process milestones are posted to web site and emailed to list of registrants</li> </ul>	<ul style="list-style-type: none"> <li>• IE and PECO draft communications</li> <li>• PECO is free to provide public information for press releases and to respond to press inquires about the RFP</li> </ul>
4/24/2009	Information session for potential bidders	IE	<ul style="list-style-type: none"> <li>• IE prepares and conducts information session for potential bidders</li> <li>• The attendance list is not public</li> </ul>	<ul style="list-style-type: none"> <li>• PECO will be present during information session to answer questions</li> <li>• ST is invited to attend</li> </ul>

<p>7/10/2009-7/31/2009</p>	<p>Guaranty Process</p>	<p>IE/PECO</p>	<ul style="list-style-type: none"> <li>• In the case of an alternate guaranty form, bidders provide proposed alternate guaranty forms to IE, IE provides redacted forms to PECO, PECO determines if forms are acceptable</li> <li>• In the case of non-material modifications to the standard Form of Guaranty, IE provides the forms to PECO to determine if modifications are acceptable</li> <li>• IE informs bidders of result of review</li> </ul>	<ul style="list-style-type: none"> <li>• IE redacts information from alternate guaranty forms that could identify bidder</li> <li>• PECO performs determinations of acceptability with respect to alternate guaranty forms with the assistance of the IE and outside counsel as necessary</li> <li>• ST informed of progress</li> </ul>
<p>8/25/2009-9/1/2009</p>	<p>Part 1 Proposal Window</p>	<p>IE/PECO</p>	<ul style="list-style-type: none"> <li>• IE determines completeness of Part 1 proposals</li> <li>• PECO makes credit assessment with support from IE as needed</li> <li>• PECO reviews with assistance from IE any proposed non-material changes to standard forms of letters of credit</li> <li>• PECO and IE review any draft documents provided by bidders in special circumstances to comply with additional requirements</li> </ul>	<ul style="list-style-type: none"> <li>• PECO has access to applicants' financial information from proposals</li> <li>• IE redacts identifying information from documents</li> <li>• PECO prepares Default Service SMA Documents, including all necessary exhibits</li> <li>• PECO prepares guaranty for bidders relying on the financial standing of a guarantor</li> <li>• ST informed of progress</li> </ul>

9/4/2009	Part 1 Notification Date	IE	<ul style="list-style-type: none"> <li>IE contacts bidders to inform them of qualification status</li> </ul>	<ul style="list-style-type: none"> <li>PECO knows names of applicants</li> </ul>
9/8/2009-9/15/2009	Part 2 Proposal Window	IE/PECO	<ul style="list-style-type: none"> <li>IE determines completeness of proposals</li> <li>PECO determines with assistance from IE acceptability of pre-bid letter of credit</li> <li>PECO and IE determine sufficiency of additional documents provided by bidders to comply with additional requirements in a number of special circumstances</li> </ul>	<ul style="list-style-type: none"> <li>IE redacts information that could identify bidders prior to PECO viewing pre-bid letter of credit</li> </ul>
9/10/2009	Bid Submission Training	IE	<ul style="list-style-type: none"> <li>IE conducts bid submission training with bidders</li> </ul>	<ul style="list-style-type: none"> <li>ST invited to observe the training</li> <li>PECO is invited to separate mock trial</li> </ul>
9/18/2009	Part 2 Notification Date	IE	<ul style="list-style-type: none"> <li>IE contacts bidders to inform them of their status</li> </ul>	<ul style="list-style-type: none"> <li>PECO knows names of applicants from preparation of Default Service SMAs and guarantees</li> </ul>
9/11/2009	Market Report (if desired by PUC)	IE/ST	<ul style="list-style-type: none"> <li>If desired, IE will prepare a confidential report to the PUC detailing current market conditions affecting the products at the RFP</li> </ul>	<ul style="list-style-type: none"> <li>IE/ST/PUC have access to report</li> </ul>
9/21/2009	Bid Date (Bids are Due)	IE/ST	<ul style="list-style-type: none"> <li>IE answers bidder questions, monitors bidding, compiles</li> </ul>	<ul style="list-style-type: none"> <li>ST invited to attend bid submission</li> </ul>

			<p>reports for PUC</p> <ul style="list-style-type: none"> <li>IE identifies for bidders which of their bids are presented to the PUC</li> </ul>	<ul style="list-style-type: none"> <li>PECO is provided with average winning price for each product and whether solicitation has purchased all available tranches</li> </ul>
<p>9/22/2009</p>	<p>PUC Decision (no later than close of business)</p>	<p>IE</p>	<ul style="list-style-type: none"> <li>IE notifies all bidders that have approved winning bids</li> </ul>	<ul style="list-style-type: none"> <li>IE informs PECO of the name of each approved supplier, the number of tranches won by each supplier, and the supplier-specific price for each product</li> </ul>
<p>9/23/2009</p>	<p>Default Service SMA, including all necessary exhibits, are executed and pre-bid letters of credit are returned to losing bidders</p>	<p>PECO/IE</p>	<ul style="list-style-type: none"> <li>PECO executes the Default Service SMA and the guaranty</li> <li>IE releases pre-bid letters of credit of losing bidders</li> <li>IE returns to losing bidders the Default Service SMAs, including all necessary exhibits and the guaranty</li> </ul>	<ul style="list-style-type: none"> <li>PECO does not have bid information of losing bidders</li> <li>PECO is only provided with information necessary for administering the winning contracts</li> </ul>

PECO Exhibit CL-3

<p>Starting 9/24/2009</p>	<p>Transaction Confirmations are executed and pre-bid letters of credit are returned to winning bidders</p>	<p>PECO/IE</p>	<ul style="list-style-type: none"> <li>• PECO faxes transaction confirmations by noon</li> <li>• PECO sends transaction confirmations and executed Default Service SMA, including all necessary exhibits</li> <li>• Approved suppliers fax back transaction confirmations by 2pm on 9/25/09 and send by overnight delivery service</li> <li>• Approved suppliers fulfill all creditworthiness requirements under the Default Service SMA</li> <li>• IE returns pre-bid security</li> </ul>	<ul style="list-style-type: none"> <li>• PECO is only provided with information necessary for administering the winning contracts</li> <li>• PECO drafts press release regarding results</li> </ul>
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(1) PUC: Pennsylvania Public Utility Commission

(2) ST: PUC Staff