

REQUEST FOR PROPOSALS FOR
Act 129 Statewide Evaluator

ISSUING OFFICE

Pennsylvania Public Utility Commission
Bureau of Technical Utility Services

RFP NUMBER
PUC RFP 2020-2

DATE OF ISSUANCE

October 8, 2020

**PUC RFP 2020-2
Act 129 Statewide Evaluator**

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CALENDAR OF EVENTS

The Commonwealth will make every effort to adhere to the following schedule:

Activity	Responsibility	Date
Deadline to submit Questions via email to Issuing Officer Darren D. Gill at dgill@pa.gov .	Potential Offerors	October 30, 2020
Answers to Potential Offeror questions posted to http://www.puc.pa.gov/contact_us/request_for_proposals.aspx no later than this date.	Issuing Office	November 6, 2020
Please monitor website http://www.puc.pa.gov/contact_us/request_for_proposals.aspx for all communications regarding the RFP.	Potential Offerors	Ongoing
Date the proposal must be <u>received</u> by the Issuing Office.	Offerors	Monday November 30, 2020 3 p.m.

PART I

GENERAL INFORMATION

I-1.Purpose. This request for proposals (“RFP”) provides to those interested in submitting proposals for the subject procurement (“Offerors”) sufficient information to enable them to prepare and submit proposals for the Pennsylvania Public Utility Commission, Bureau of Technical Utility Service’s (“Commission”, “TUS”, “Issuing Office”) consideration on behalf of the Commonwealth of Pennsylvania (“Commonwealth”) to satisfy a need for an Act 129 Statewide Evaluator (“Project”). This RFP contains instructions governing the requested proposals, including the requirements for the information and material to be included; a description of the service to be provided; requirements which Offerors must meet to be eligible for consideration; general evaluation criteria; and other RFP requirements.

I-2.Issuing Office. The Pennsylvania Public Utility Commission, Bureau of Technical Utility Services has issued this RFP on behalf of the Commonwealth. The sole point of contact in the Commonwealth for this RFP shall be the Issuing Officer, **Darren D. Gill**, Deputy Director of the Bureau of Technical Utility Services, Pennsylvania Public Utility Commission, P.O. Box 3265, Harrisburg PA 17105-3265, work telephone number 717 783-5244 and email dgill@pa.gov. Please refer all inquiries to the Issuing Officer. **Due to the COVID-19 Emergency, please communicate only via email, as staff is telecommuting and not in the office, and thus is not able to receive office phone calls and has limited access to physical mail service.**

I-3.Overview of Project. The Pennsylvania Public Utility Commission, Bureau of Technical Utility Services seeks to retain the services of a contractor who will perform as the Commission’s Act 129 Statewide Evaluator. The Commission has been charged by the Pennsylvania General Assembly pursuant to Act 129 of 2008 with establishing an energy efficiency and conservation program. 66 Pa.C.S. §§ 2806.1 and 2806.2. The energy efficiency and conservation program requires each electric distribution company (EDC) with at least 100,000 customers to adopt a plan to reduce peak energy demand and energy consumption within its service territory. 66 Pa.C.S. § 2806.1. In order to fulfill this obligation, on June 18, 2020, the Commission entered an Implementation Order at Docket No. M-2020-3015228. As part of the Implementation Order and Act 129, the Commission seeks a Statewide Evaluator to evaluate the EDCs’ Phase IV energy efficiency and conservation programs.

I-4.Objectives. The selected bidder will become a contractor for the Commission, and will perform work as the Commission’s Act 129 Statewide Evaluator, which will include:

- Conduct an evaluation process to monitor and audit EDC data collection and provide quality assurance that EDC reported data are reasonably accurate and independently verified.

- Evaluate potential improvements to each EDC's programs and measures, including making recommendations to the EDC and Commission that can increase cost-effectiveness of EDC implementation plans by lowering administrative and overhead costs.
- Review and update the existing Phase III Audit Plan, paying particular attention to opportunities that can reduce administrative and overhead costs while maintaining a reasonable level of data accuracy.
- Maintain and update, as necessary, the Pennsylvania Technical Reference Manual (TRM) in conjunction with TUS staff and the Commission's formal order process.
- Maintain and update the Pennsylvania Total Resource Cost (TRC) Test Manual in conjunction with TUS staff and the Commission's formal order process.
- Maintain EDC's EE&C program performance data via a secure and confidential SharePoint site and prepare semi-annual and annual reports for the Commission.
- Conduct an energy efficiency baseline study to support a Phase V market potential study.
- Conduct an energy efficiency market potential study and prepare recommendations to the Commission for Phase V energy efficiency targets.
- Conduct a peak energy demand reduction market potential study and prepare recommendations to the Commission for Phase V demand reduction targets.
- Review EDC EE&C program plan changes and advise Commission staff as to the ability of the plan changes to cost-effectively achieve savings targets.
- Provide expert consultation to Commission staff, coordinate program evaluation with Commission staff and conduct or participate in meetings with Commission staff and stakeholders.
- Provide Act 129 Phase IV data to Commission staff for use in analysis and/or coordinated state agency projects that may benefit Act 129.
- Conduct all work in a manner which most cost-effectively balances the needs of the Commission while striving to minimize administrative and overhead costs.

I-5.Type of Contract. It is proposed that if the Issuing Office enters into a contract as a result of this RFP, it will be a **six-year, fixed term, price not-to-exceed, fee-for-service contract** containing the Contract Terms and Conditions as shown in Part VI. This RFP, the winning proposer's proposal, and the Questions and Answers published by the Commission on its website, shall be incorporated into the Contract by reference.

I-6.Rejection of Proposals. The Issuing Office reserves the right, in its sole and complete discretion, to reject any proposal received as a result of this RFP. The Issuing Office, in its sole discretion, may undertake negotiations with Offerors whose proposals, in the judgment of the Issuing Office, show them to be qualified, responsible, and capable of performing the Project.

I-7.Incurring Costs. The Issuing Office is not liable for any costs the Offeror incurs in preparation and submission of its proposal, in participating in the RFP process or in anticipation of award of the contract.

I-8.Questions & Answers. If an Offeror has any questions regarding this RFP, the Offeror must submit the questions by email (**with the subject line “PUC RFP 2020-2 Act 129 SWE Question”**) to the Issuing Officer named in Part I, Section I-2 of the RFP. If the Offeror has questions, they may be submitted as they arise via email, but no later than the date indicated on the Calendar of Events. The Issuing Officer shall post the final questions and answers to the questions at http://www.puc.pa.gov/contact_us/request_for_proposals.aspx on an ongoing basis until the deadline stated on the Calendar of Events. When an Offeror submits a question after the deadline date for receipt of questions indicated on the Calendar of Events, the Issuing Officer *may* respond to questions of an administrative nature by directing the questioning Offeror to specific provisions in the RFP. To the extent that the Issuing Office decides to respond to a non-administrative question *after* the deadline date, the question and answer will be provided to all Offerors by posting the final question and answer on the website.

All questions and responses as posted to the website are considered as an addendum to, and part of, this RFP in accordance with RFP **Part I, Section I-9**. Each Offeror shall be responsible to monitor the website for new or revised RFP information. The Issuing Office shall not be bound by any verbal information nor shall it be bound by any written information that is not either contained within the RFP or formally issued as an addendum by the Issuing Office. The Issuing Office does not consider questions to be a protest of the specifications or of the solicitation. The required protest process for Commonwealth procurements is described in **Part I, Section I-25**.

I-9.Addenda to the RFP. If the Issuing Office deems it necessary to revise any part of this RFP before the proposal response date, the Issuing Office will post an addendum to http://www.puc.pa.gov/contact_us/request_for_proposals.aspx. It is the Offeror’s responsibility to periodically check the website for any new information or addenda to the RFP. Answers to the questions asked during the Questions & Answers period also will be posted to the website as addenda to the RFP.

I-10. Response Date. To be considered for selection, proposal submissions as described in **Part I, Section I-11** must arrive at the Issuing Office on or before the time and date specified in the RFP Calendar of Events. The Issuing Office will reject (unopened) any late proposals.

Due to the COVID-19 Emergency, Commission staff is telecommuting, and the Commission has limited access to physical mail delivery. Therefore, **the Commission will accept proposals submitted in electronic form via email sent to the Issuing Officer.** In order to address any attachment megabyte size limitations for Commonwealth email systems, please separate your proposal into pieces no more than 10 mb in size and have no more than 10 mb of attachments attached to any one email. Please divide the submission of your proposal into as many emails as necessary, indicating each as “1 of 5”, “2 of 5” (five just used as an example) as needed.

I-11. Proposal Requirements.

A. Proposal Submission: To be considered, Offerors should submit a complete response to this RFP to the Issuing Office, using the format provided in **Section I-11B**, providing a single proposal with separate files **for the Technical Submittal; the Cost Submittal; and the Small Diverse Business and Small Business (SDB/SB) Participation Submittal including related Letter(s) of Intent**. The Offeror shall make no other distribution of its proposal to any other Offeror or Commonwealth official or Commonwealth consultant. Each proposal page should be numbered for ease of reference. **An official authorized to bind the Offeror to its provisions must sign the proposal.** If the official signs the **Proposal Cover Sheet (Appendix A** to this RFP), the requirement will be met. For this RFP, the proposal must remain valid for 120 days or until a contract is fully executed. If the Issuing Office selects the Offeror's proposal for award, the contents of the selected Offeror's proposal will become, except to the extent the contents are changed through Best and Final Offers or negotiations, contractual obligations.

Each Offeror submitting a proposal specifically waives any right to withdraw or modify it, except that the Offeror may withdraw its proposal by email received by the Issuing Officer prior to the exact hour and date specified for proposal receipt provided in the Calendar of Events. An Offeror may modify its submitted proposal prior to the exact hour and date set for proposal receipt only by submitting a clearly identified revised submission marked as "Revised Proposal" which complies with the RFP requirements.

B. Proposal Format: Offerors must submit their proposals in the format, including heading descriptions, outlined below. To be considered, the proposal must respond to all proposal requirements. Offerors should provide any other information thought to be relevant, but not applicable to the enumerated categories, as an appendix to the Proposal. All cost data relating to this proposal and all Small Diverse Business and Small Business cost data should be kept separate from and not included in the Technical Submittal. Offerors should not reiterate technical information in the cost submittal. Each proposal shall consist of the following **three** separate files:

1. Technical Submittal, in response to **Part III**:
 - a. Complete, sign and include **Appendix B – Domestic Workforce Utilization Certification**; and
 - b. Complete, sign and include **Appendix C, Iran Free Procurement Certification Form**.
2. Cost Submittal, in response to RFP **Part IV**; and
3. Small Diverse Business and Small Business (SDB/SB) Participation Submittal, in response to RFP **Part V**:

- a. Complete and include **Appendix E - SDB/SB Participation Submittal Form** and **SDB/SB Letter of Intent**. Offeror must provide a Letter of Intent for each SDB and SB listed on the SDB/SB Participation Submittal Form.

The Issuing Office reserves the right to request additional information which, in the Issuing Office's opinion, is necessary to assure that the Offeror's competence, number of qualified employees, business organization, and financial resources are adequate to perform according to the RFP.

The Issuing Office may make investigations as deemed necessary to determine the ability of the Offeror to perform the Project, and the Offeror shall furnish to the Issuing Office all requested information and data. The Issuing Office reserves the right to reject any proposal if the evidence submitted by, or investigation of, such Offeror fails to satisfy the Issuing Office that such Offeror is properly qualified to carry out the obligations of the RFP and to complete the Project as specified.

- I-12. Economy of Preparation.** Offerors should provide a straightforward, concise description of the Offeror's ability to meet the requirements of the RFP.
- I-13. Alternate Proposals.** The Issuing Office has identified the basic approach to meeting its requirements, allowing Offerors to be creative and propose their best solution to meeting these requirements. The Issuing Office will not accept alternate proposals.
- I-14. Discussions for Clarification.** Offerors may be required to make an oral or written clarification of their proposals to the Issuing Office to ensure thorough mutual understanding and responsiveness to the solicitation requirements. The Issuing Office will initiate requests for clarification. Clarifications may occur at any stage of the evaluation and selection process prior to contract execution.
- I-15. Prime Contractor Responsibilities.** The selected Offeror must perform at least 50% of the total contract value. Nevertheless, the contract will require the selected Offeror to assume responsibility for all services offered in its proposal whether it produces them itself or by subcontract. Further, the Issuing Office will consider the selected Offeror to be the sole point of contact with regard to all contractual matters.
- I-16. Proposal Contents.**
 - A. Confidential Information.** The Commonwealth is not requesting, and does not require, confidential proprietary information or trade secrets to be included as part of Offerors' submissions in order to evaluate proposals submitted in response to this RFP. Accordingly, except as provided herein, Offerors should not label proposal submissions as confidential or proprietary or trade secret protected. Any Offeror who determines that it must divulge such information as part of its proposal must submit the signed written statement described in subsection c. below and must additionally

provide a redacted version of its proposal, which removes only the confidential proprietary information and trade secrets, for required public disclosure purposes.

- B. Commonwealth Use.** All material submitted with the proposal shall be considered the property of the Commonwealth of Pennsylvania. The Commonwealth has the right to use any or all ideas not protected by intellectual property rights that are presented in any proposal regardless of whether the proposal becomes part of a contract. Notwithstanding any Offeror copyright designations contained in proposals, the Commonwealth shall have the right to make copies and distribute proposals internally and to comply with public record or other disclosure requirements under the provisions of any Commonwealth or United States statute or regulation, or rule or order of any court of competent jurisdiction.

- C. Public Disclosure.** After the award of a contract pursuant to this RFP, all proposal submissions are subject to disclosure in response to a request for public records made under the Pennsylvania *Right-to-Know-Law*, 65 P.S. §§ 67.101, et seq. If a proposal submission contains confidential proprietary information or trade secrets, a signed written statement to this effect must be provided with the submission in accordance with 65 P.S. § 67.707(b) for the information to be considered exempt under 65 P.S. § 67.708(b)(11) from public records requests. Refer to **Appendix D** of the RFP for a **Trade Secret Confidential Proprietary Information Notice Form** that may be utilized as the signed written statement, if applicable. If financial capability information is submitted in response to Part III of this RFP, such financial capability information is exempt from public records disclosure under 65 P.S. § 67.708(b)(26).

I-17. Best and Final Offers (BAFO).

- A.** While not required, the Issuing Office reserves the right to conduct discussions with Offerors for the purpose of obtaining “best and final offers.” To obtain best and final offers from Offerors, the Issuing Office may do one or more of the following, in any combination and order:
 - 1. Schedule oral presentations;
 - 2. Request revised proposals;
 - 3. Conduct an online auction; and
 - 4. Enter into pre-selection negotiations.

- B.** The following Offerors will **not** be invited by the Issuing Office to submit a Best and Final Offer:
 - 1. Those Offerors which the Issuing Office has determined to be not responsible or whose proposals the Issuing Office has determined to be not responsive.

 - 2. Those Offerors which the Issuing Office has determined in accordance with **Part II, Section II-5** from the submitted and gathered financial and other information,

do not possess the financial capability, experience or qualifications to assure good faith performance of the contract.

3. Those Offerors whose score for their technical submittal of the proposal is less than 75% of the total amount of technical points allotted to the technical criterion.

The Issuing Office may further limit participation in the best and final offers process to those remaining responsible offerors which the Issuing Office has, within its discretion, determined to be within the top competitive range of responsive proposals.

- C. The Evaluation Criteria found in **Part II, Section II-4**, shall also be used to evaluate the Best and Final offers.
 - D. Price reductions offered through any online auction shall have no effect upon the Offeror's Technical Submittal.
 - E. Any reduction to commitments to Small Diverse Businesses and Small Businesses must be proportional to the reduction in the total price offered through any BAFO process or contract negotiations unless approved by BDISBO.
- I-18. News Releases.** Offerors shall not issue news releases, Internet postings, advertisements or any other public communications pertaining to this Project without prior written approval of the Issuing Office, and then only in coordination with the Issuing Office.
- I-19. Restriction of Contact.** From the issue date of this RFP until the Issuing Office selects a proposal for award, the Issuing Officer is the sole point of contact concerning this RFP. Any violation of this condition may be cause for the Issuing Office to reject the offending Offeror's proposal. If the Issuing Office later discovers that the Offeror has engaged in any violations of this condition, the Issuing Office may reject the offending Offeror's proposal or rescind its contract award. Offerors must agree not to distribute any part of their proposals beyond the Issuing Office. An Offeror who shares information contained in its proposal with other Commonwealth personnel and/or competing Offeror personnel may be disqualified.
- I-20. Issuing Office Participation.** Offerors shall provide all services, supplies, facilities, and other support necessary to complete the identified work.
- I-21. Term of Contract.** The term of the contract will commence on the Effective Date and **will end on February 28, 2027**. The Issuing Office will fix the Effective Date after the contract has been fully executed by the selected Offeror and by the Commonwealth and all approvals required by Commonwealth contracting procedures have been obtained. The selected Offeror shall not start the performance of any work prior to the Effective Date of the contract and the Commonwealth shall not be liable to pay the selected Offeror for any service or work performed or expenses incurred before the Effective Date of the contract.

I-22. Offeror's Representations and Authorizations. By submitting its proposal, each Offeror understands, represents, and acknowledges that:

- A.** All of the Offeror's information and representations in the proposal are material and important, and the Issuing Office may rely upon the contents of the proposal in awarding the contract(s). The Commonwealth shall treat any misstatement, omission or misrepresentation as fraudulent concealment of the true facts relating to the Proposal submission, punishable pursuant to 18 Pa.C.S. § 4904.
- B.** The Offeror has arrived at the price(s) and amounts in its proposal independently and without consultation, communication, or agreement with any other Offeror or potential offeror.
- C.** The Offeror has not disclosed the price(s), the amount of the proposal, nor the approximate price(s) or amount(s) of its proposal to any other firm or person who is an Offeror or potential offeror for this RFP, and the Offeror shall not disclose any of these items on or before the proposal submission deadline specified in the Calendar of Events of this RFP.
- D.** The Offeror has not attempted, nor will it attempt, to induce any firm or person to refrain from submitting a proposal on this contract, or to submit a proposal higher than this proposal, or to submit any intentionally high or noncompetitive proposal or other form of complementary proposal.
- E.** The Offeror makes its proposal in good faith and not pursuant to any agreement or discussion with, or inducement from, any firm or person to submit a complementary or other noncompetitive proposal.
- F.** To the best knowledge of the person signing the proposal for the Offeror, the Offeror, its affiliates, subsidiaries, officers, directors, and employees are not currently under investigation by any governmental agency and have not in the last **four** years been convicted or found liable for any act prohibited by State or Federal law in any jurisdiction, involving conspiracy or collusion with respect to bidding or proposing on any public contract, except as the Offeror has disclosed in its proposal.
- G.** To the best of the knowledge of the person signing the proposal for the Offeror and except as the Offeror has otherwise disclosed in its proposal, the Offeror has no outstanding, delinquent obligations to the Commonwealth including, but not limited to, any state tax liability not being contested on appeal or other obligation of the Offeror that is owed to the Commonwealth.
- H.** The Offeror is not currently under suspension or debarment by the Commonwealth, any other state or the federal government, and if the Offeror cannot so certify, then it shall submit along with its proposal a written explanation of why it cannot make such certification.

- I. The Offeror has not made, under separate contract with the Issuing Office, any recommendations to the Issuing Office concerning the need for the services described in its proposal or the specifications for the services described in the proposal.
- J. Each Offeror, by submitting its proposal, authorizes Commonwealth agencies to release to the Commonwealth information concerning the Offeror's Pennsylvania taxes, unemployment compensation and workers' compensation liabilities.
- K. Until the selected Offeror receives a fully executed and approved written contract from the Issuing Office, there is no legal and valid contract, in law or in equity, and the Offeror shall not begin to perform.
- L. The Offeror is not currently engaged, and will not during the duration of the contract engage, in a boycott of a person or an entity based in or doing business with a jurisdiction which the Commonwealth is not prohibited by Congressional statute from engaging in trade or commerce.

I-23. Notification of Selection.

- A. **Contract Negotiations.** The Issuing Office will notify all Offerors in writing of the Offeror selected for contract negotiations after the Issuing Office has determined, taking into consideration all of the evaluation factors, the proposal that is the most advantageous to the Issuing Office.
- B. **Award.** Offerors whose proposals are not selected will be notified when contract negotiations have been successfully completed and the Issuing Office has received the final negotiated contract signed by the selected Offeror.

I-24. Debriefing Conferences. Upon notification of award, Offerors whose proposals were not selected will be given the opportunity to be debriefed. The Issuing Office will schedule the debriefing at a mutually agreeable time. The debriefing will not compare the Offeror with other Offerors, other than the position of the Offeror's proposal in relation to all other Offeror proposals. An Offeror's exercise of the opportunity to be debriefed does not constitute nor toll the time for filing a protest (See **Section I-25**).

I-25. RFP Protest Procedure. The RFP Protest Procedure is on the DGS website at <http://www.dgs.pa.gov/Documents/Procurement%20Forms/Handbook/Pt1/Pt%20I%20Ch%2058%20Bid%20Protests.pdf>. A protest by a party that has not or has not yet submitted a proposal must be filed no later than the proposal submission deadline specified in the Calendar of Events of the RFP. Offerors may file a protest within **seven** days after the protesting Offeror knew or should have known of the facts giving rise to the protest, but in no event may an Offeror file a protest later than **seven** days after the date the notice of award of the contract is posted. The date of filing is the date of receipt of the protest. A protest must be filed in writing (via email due to the COVID-19 Emergency) with the Issuing Office. To be timely, the protest must be received by 4:00 p.m. on the seventh day.

I-26. Use of Electronic Versions of this RFP. This RFP is being made available by electronic means. If an Offeror electronically accepts the RFP, the Offeror acknowledges and accepts full responsibility to insure that no changes are made to the RFP. In the event of a conflict between a version of the RFP in the Offeror's possession and the Issuing Office's version of the RFP, the Issuing Office's version shall govern.

PART II

CRITERIA FOR SELECTION

- II-1. Mandatory Responsiveness Requirements.** To be eligible for selection, a proposal must:
- A. Be timely received from an Offeror (see **Part I, Section I-10**); and
 - B. Be properly signed by the Offeror (see **Part I, Section I-11A**).
- II-2. Technical Nonconforming Proposals.** The two (2) Mandatory Responsiveness Requirements set forth in **Section II-1** above (A-B) are the only RFP requirements that the Commonwealth will consider to be *non-waivable*. The Issuing Office reserves the right, in its sole discretion, to (1) waive any other technical or immaterial nonconformities in an Offeror's proposal, (2) allow the Offeror to cure the nonconformity, or (3) consider the nonconformity in the scoring of the Offeror's proposal.
- II-3. Evaluation.** The Issuing Office has selected a committee of qualified personnel to review and evaluate timely submitted proposals. Independent of the committee, BDISBO will evaluate the Small Diverse Business and Small Business Participation Submittal and provide the Issuing Office with a rating for this component of each proposal. The Issuing Office will notify in writing of its selection for negotiation the responsible Offeror whose proposal is determined to be the most advantageous to the Commonwealth as determined by the Issuing Office after taking into consideration all of the evaluation factors.
- II-4. Evaluation Criteria.** The following criteria will be used in evaluating each proposal:
- A. **Technical:** The Issuing Office has established the weight for the Technical criterion for this RFP as **50%** of the total points. Evaluation will be based upon the following:
 - 1. **Work Plan.** Evaluation of your work plan to perform as the Act 129 Statewide Evaluator.
 - 2. **Prior Experience.** Evaluation of prior projects, both for the company and/or for specific personnel assigned to the project. Work completed more recently will carry greater weight than older (10+ years ago) work.
 - 3. **Personnel Qualifications.** Evaluation of educational, work experience, and technical capability of personnel assigned to the project. Please pay particular attention to describing leadership/project management staff qualifications.

The final Technical scores are determined by giving the maximum number of technical points available to the proposal(s) with the highest raw technical score. The remaining proposals are rated by applying the Technical Scoring Formula set forth at

the following webpage: https://www.dgs.pa.gov/Materials-Services-Procurement/Procurement-Resources/Pages/RFP_SCORING_FORMULA.aspx

- B. Cost:** The Issuing Office has established the weight for the Cost criterion for this RFP as **30%** of the total points. The cost criterion is rated by giving the proposal with the lowest total cost the maximum number of Cost points available. The remaining proposals are rated by applying the Cost Formula set forth at the following webpage: https://www.dgs.pa.gov/Materials-Services-Procurement/Procurement-Resources/Pages/RFP_SCORING_FORMULA.aspx

The total price not-to-exceed cost for the entire contract must be clearly provided as a total contract cost.

In addition, the cost for each year will be listed separately, listed as year 1 through 6. These costs must add up to the total contract cost.

- Year 1 – Contract Effective Date (assume 3-1-21) – June 30, 2022.
- Year 2 – July 1, 2022 – June 30, 2023.
- Year 3 – July 1, 2023 – June 30, 2024.
- Year 4 – July 1, 2024 – June 30, 2025.
- Year 5 – July 1, 2025 – June 30, 2026.
- Year 6 – July 1, 2026 – February 28, 2027.

C. Small Diverse Business and Small Business Participation:

BDISBO has established the minimum evaluation weight for the Small Diverse Business and Small Business Participation criterion for this RFP as **20%** of the total points.

1. The Small Diverse and Small Business point allocation is based entirely on the percentage of the contract cost committed to Small Diverse Businesses and Small Businesses. If the Offeror is a Small Diverse Business, 100% of the contract cost is allocated to Small Diverse Business participation. If the Offeror is a Small Business, 100% of the contract cost is allocated to Small Business participation.
2. A total combined SDB/SB commitment less than one percent (1%) of the total contract cost is considered de minimis and will receive no Small Diverse Business or Small Business points.
3. Based on a maximum total of 200 available points for the Small Diverse Business and Small Business Participation Submittal, the scoring mechanism is as follows:

<p>Small Diverse Business and Small Business Raw Score =</p> <p>$200 (SDB\% + (1/3 * SB \%)$</p>

4. The Small Diverse Business and Small Business Raw Score is capped at 200.

5. The Offeror with the highest raw score will receive 200 points. Each Offeror's raw score will be pro-rated against the Highest Offeror's raw score by applying the formula set forth on the following webpage:

https://www.dgs.pa.gov/Materials-Services-Procurement/Procurement-Resources/Pages/RFP_SCORING_FORMULA.aspx

6. The Offeror's prior performance in meeting its contractual obligations to Small Diverse Businesses and Small Businesses will be considered by BDISBO during the scoring process. To the extent the Offeror has failed to meet prior contractual commitments, BDISBO may recommend to the Issuing Office that the Offeror be determined non-responsible for the limited purpose of eligibility to receive Small Diverse Business and Small Business points.

D. Domestic Workforce Utilization: Any points received for the Domestic Workforce Utilization criterion are bonus points in addition to the total points for this RFP. The maximum amount of bonus points available for this criterion is 3% of the total points.

To the extent permitted by the laws and treaties of the United States, each proposal will be scored for its commitment to use domestic workforce in the fulfillment of the contract. Maximum consideration will be given to those Offerors who will perform the contracted direct labor exclusively within the geographical boundaries of the United States or within the geographical boundaries of a country that is a party to the World Trade Organization Government Procurement Agreement. Those who propose to perform a portion of the direct labor outside of the United States and not within the geographical boundaries of a party to the World Trade Organization Government Procurement Agreement will receive a correspondingly smaller score for this criterion. See the following webpage for the Domestic Workforce Utilization Formula:

https://www.dgs.pa.gov/Materials-Services-Procurement/Procurement-Resources/Pages/RFP_SCORING_FORMULA.aspx

E. Iran Free Procurement Certification and Disclosure. Prior to entering a contract worth at least \$1,000,000 or more with a Commonwealth entity, an offeror must: a) certify it is not on the current list of persons engaged in investment activities in Iran created by the Pennsylvania Department of General Services ("DGS") pursuant to Section 3503 of the Procurement Code and is eligible to contract with the Commonwealth under Sections 3501-3506 of the Procurement Code; or b) demonstrate it has received an exception from the certification requirement for that solicitation or contract pursuant to Section 3503(e). All offerors must complete and return the Iran Free Procurement Certification form, (**Appendix C, Iran Free Procurement Certification Form**), which is attached hereto and made part of this RFP. The completed and signed Iran Free Procurement Certification form must be submitted as part of the Technical Submittal.

See the following web page for current Iran Free Procurement list:

<http://www.dgs.pa.gov/businesses/materials%20and%20services%20procurement/procurement-resources/pages/default.aspx#.WDNfJJgo6Ht>

II-5. Offeror Responsibility. To be responsible, an Offeror must submit a responsive proposal and possess the capability to fully perform the contract requirements in all respects and the integrity and reliability to assure good faith performance of the contract.

In order for an Offeror to be considered responsible for this RFP and therefore eligible for selection for best and final offers or selection for contract negotiations:

- A. The total score for the technical submittal of the Offeror's proposal must be greater than or equal to **75% of the available technical points**; and
- B. The Issuing Office will award a contract only to an Offeror determined to be responsible in accordance with the most current version of Commonwealth Management Directive 215.9, *Contractor Responsibility Program*.

II-6. Final Ranking and Award.

- A. After any best and final offer process conducted, the Issuing Office will combine the evaluation committee's final technical scores, BDISBO's final Small Diverse Business and Small Business Participation Submittal scores, the final cost scores, and (when applicable) the domestic workforce utilization scores, in accordance with the relative weights assigned to these areas as set forth in this Part.
- B. The Issuing Office will rank responsible offerors according to the total overall score assigned to each, in descending order.
- C. The Issuing Office must select for contract negotiations the offeror with the highest overall score.
- D. The Issuing Office has the discretion to reject all proposals or cancel the request for proposals at any time prior to the time a contract is fully executed when it is in the best interests of the Commonwealth. The reasons for the rejection or cancellation shall be made part of the contract file.

PART III

TECHNICAL SUBMITTAL

III-1. Statement of the Project.

This Section of the RFP identifies in detail the work that will need to be performed by the Act 129 Statewide Evaluator.

With the passage of Act 129 of 2008, the Commission has been charged by the Pennsylvania General Assembly with establishing an energy efficiency and conservation (“EE&C”) program. In Phase I, the EE&C program required each electric distribution company (“EDC”) with at least 100,000 customers to submit a plan for Commission approval to reduce electric consumption by May 31, 2011, by at least 1% of its expected consumption for June 1, 2009 through May 31, 2010. 66 Pa. C.S. § 2806.1(c)(1). By May 31, 2013, the total annual consumption was to be reduced by a minimum of 3% of the EDC’s consumption for June 1, 2009 through May 31, 2010. 66 Pa. C.S. § 2806.1(c)(2). Also, by May 31, 2013, each covered EDC’s peak demand was to be reduced by a minimum of 4.5% of the EDC’s annual system peak demand in the 100 hours of highest demand, measured against the EDC’s peak demand during the period of June 1, 2007 through September 30, 2007. 66 Pa. C.S. §2806.1(d)(1). The Phase I Act 129 EE&C programs commenced in 2009 and operated through May 31, 2013.

Act 129 also required the Commission to periodically evaluate whether there are additional cost-effective energy efficiency and peak demand reductions to be garnered in subsequent phases of Act 129 and if so, to require additional, incremental reductions. 66 Pa. C.S. §2806.1 (C)(3), (D)(2). Phase III Act 129 programs commenced June 1, 2016 and are scheduled to operate through May 31, 2021. In order to make an informed decision about a possible Phase IV of Act 129 programs, the Commission contracted with the Phase III SWE to conduct residential as well as commercial and industrial baseline studies as well as a Phase IV, Market Potential Energy Efficiency Study.

On June 18, 2020, the Commission entered a Final Phase IV Implementation Order, at Docket No. M-2020-3015228, establishing a timeline for program implementation and establishing energy efficiency and peak demand reduction targets for each EDC covered by Act 129. The Final Implementation Order established a five-year Phase IV term commencing on June 1, 2021 and ending on May 31, 2026. The reduction targets appear below in Table 1.

Table 1: Final Phase IV Reduction Targets, by EDC

EDC	Consumption Reduction (MWh)	Peak Demand Reduction (MW)	Low Income Consumption Reduction (MWh)
Duquesne Light	348,126	62	18,566
PECO	1,380,837	256	80,089
PPL	1,250,157	229	72,509
FE: Met-Ed	463,215	76	26,866
FE: Penelec	437,676	80	25,385
FE: Penn Power	128,909	20	7,477
FE: West Penn Power	504,951	86	29,287

The Commission has also issued other Phase IV related orders that were pertinent to Phase III SWE activities and expects similar of the Phase IV SWE. In particular, on December 19, 2019, the Commission issued a Final Implementation Order for the Total Resource Cost (TRC) Test for Phase IV of Act 129 at Docket No. M-2019-3006868. The Commission also issued a Technical Reference Manual (TRM) Final Order on August 8, 2019, at Docket No. M-2019-3006867. The effective date of the TRM changes from the August 2019 Final Order is June 1, 2021; thereby, applying to the first year of Phase IV. Thereafter, the Commission anticipates updating the TRM on an as needed basis, to be determined by the Commission. The Commission anticipates that the Phase IV SWE will be very involved in any TRM updates that may occur in Phase IV with more detail contained in this RFP.

The Commission is issuing this RFP to retain the services of a statewide evaluator for the Phase IV EE&C Program who will monitor and verify EDC data collection, quality assurance processes and performance of EDCs' EE&C programs. This statewide evaluator will also evaluate each EDC's plan results on an annual basis and the entire EE&C program as a whole. This evaluation will include an analysis of plan and program impacts (energy and peak demand savings) and cost-effectiveness, report results and provide recommendations for plan and program improvements. In addition, the statewide evaluator will conduct an assessment of potential future energy efficiency and peak demand savings.

The EDCs that must comply with the Act are Duquesne Light Company, Metropolitan Edison Company, PECO Energy Company, Pennsylvania Electric Company, Pennsylvania Power Company, PPL Electric Utilities Corporation and West Penn Power Company. The broad customer class categories that are to be tracked are residential, low-income residential, commercial, industrial, and government/non-profit/institutional (GNI).

III-2. Nature and Scope of the Project.

The Act requires the Commission to establish an evaluation process that monitors and verifies data collection, quality assurance and the results of each EDC plan and the program as a whole, including cost-effectiveness in accordance with the TRC test. To assist in this endeavor, the Commission has adopted a TRM to help fulfill the evaluation process requirements contained in the statute.

While the Act requires the Commission to oversee the proper implementation of the EDCs' plans, each EDC plan must explain how quality assurance and performance will be measured, verified and evaluated by the EDCs' own independent evaluators. An evaluation of the EDCs' plan implementation is conducted every year, as each EDC must submit a final annual report by September 30, documenting the effectiveness of its plan, energy savings measurement and verification, an evaluation of the cost-effectiveness of expenditures and any other information the Commission requires.

The work scope in this RFP is written as a fairly high level overview and generally seeks to build upon the processes, manuals and studies adopted during Phase III to audit and verify the accuracy of the results provided by the EDCs and the Act 129 EE&C program as a whole. Bidders are requested to propose an approach for the evaluation of the EDCs' Phase IV EE&C plans so as to accomplish the following:

- Conduct an evaluation process to monitor, audit and verify EDC data collection and provide quality assurance that EDC-claimed savings are independently verified (includes working with EDC independent evaluators to audit results and assessing semi-annual and annual reports that EDCs provide to the Commission.)
- Evaluate potential improvements to each EDC's programs and measures with a particular focus on reducing administrative and overhead costs.
- Review and update the existing Phase III Audit Plan.
- Maintain and update, as necessary, the Pennsylvania TRM in conjunction with TUS staff and the Commission's formal order process. This includes incorporating information derived from Act 129 program data and secondary research sources to ensure that the TRM reasonably and accurately captures EE&C program measure savings. Where and when practical, modifications to the TRM should be recommended that reflect the use of deemed savings protocols without significantly diminishing the accuracy of reported savings.
- Maintain and update the Pennsylvania TRC Test Manual in conjunction with TUS staff and the Commission's formal order process.
- Maintain EDC's EE&C program performance data, via a secure and confidential SharePoint site, and prepare semi-annual and annual reports for the Commission.
- Conduct an energy efficiency baseline study to support a Phase V market potential study.

- Conduct an energy efficiency market potential study and prepare recommendations to the Commission for Phase V energy efficiency targets.
- Conduct a peak demand reduction market potential study and prepare recommendations to the Commission for Phase V peak demand reduction targets.
- Review EDC EE&C program plan changes and advise Commission staff of the ability of the plan changes to cost-effectively achieve savings targets.
- Provide expert consultation to Commission staff, coordinate program evaluation with Commission staff and conduct or participate in meetings with Commission staff and stakeholders.
- Provide Act 129 Phase IV data to Commission staff for use in analysis and/or coordinated state agency projects that may benefit Act 129.

III-3. Requirements.

The Contractor will be responsible for managing sub-contractors, if any, so that the Contractor speaks with one voice through the prime Contractor. The Contractor will also be responsible for maintaining regular and direct communication with the Project Officer and staff of the Commission’s Bureau of Technical Utility Services. Contractor must also maintain and archive electronic and paper files and data collected or developed during the conduct of its duties using a secure SharePoint site. Contractor must attend meetings as directed by the Project Officer.

The Contractor will have access to customer information and other confidential data. Contractor will need to sign confidentiality agreements with EDCs and other entities that will limit Contractor’s use of this data to supporting this auditing program.

Although this contract will be paid for by the Contracting Entity, the Contractor should realize that the Commission is the principal client. Consequently, there will be no direct reporting by the Contractor to the Contracting Entity or EDCs, without prior Commission staff approval. It is necessary that the Commission maintain control of this engagement and that it and the EDCs be kept abreast of the Contractor’s progress. Therefore, periodic oral and written reports will be necessary in addition to the frequent informal contact between the Contractor’s staff and the Commission’s staff.

III-4. Tasks.

The roles and functions that EDCs, Contractor and Commission staff will fulfill are outlined in the following Table 2.

TABLE 2

Pennsylvania Energy Efficiency and Conservation Programs – Evaluation, Measurement and Verification, Data Tracking and Reporting Activities: Roles and Responsibilities for EDCs, Statewide Evaluator and Commission

Task and/or Deliverable	Electric Distribution Company (or their Consultant)	Contractor	PA PUC
Statewide Studies			
Conduct electric energy efficiency baseline studies to support EE Market Potential Study.		XX	
Conduct electric Energy Efficiency Market Potential Study for targets to be achieved in a potential Phase V EE&C Program from 6/1/26 to 5/31/31.		XX	
Conduct electric Peak Demand Reduction Market Potential Study for targets to be achieved in a potential Phase V Peak Demand Reduction Program from 6/1/26 to 5/31/31.		XX	
Review and approval of Statewide Baseline and Market Potential studies.			XX
Initiate and coordinate updates to TRM and interim updates (new protocols or corrections).		XX	
Approval of TRM updates.			XX
Initiate, scope, and conduct/coordinate statewide site inspections, statewide site metering studies, review of data/studies from PA and other states, etc. to determine if the PA TRM correctly estimates savings and/or to revise PA TRM protocols (all with a focused attention to reduce administrative and overhead costs).		XX	
Audit and Assess EDC Phase IV Programs and Results			
Prepare EDC impact and process evaluation plans; including database and reporting protocols, survey templates, and schedules.	XX		
Review and approval of EDC evaluation plans.		XX	XX
Review and update existing Phase III Audit Plan. Thereafter, update Audit Plan as needed.		XX	
Approval of revised statewide audit plan			XX
Conduct Impact Evaluation, process evaluation, NTG analysis and cost-effectiveness evaluation.	XX		
Review/audit all EDC evaluation results-impact evaluation, process evaluation, NTG analysis and cost-effectiveness evaluation.		XX	
Databases			

Design, implementation and maintenance of EDC primary program tracking database(s) with project and program data.	XX		
Establishing and implementing quality control reviews of EDC program tracking databases.		XX	
Statewide Data Management and Quality Control. Design, implementation and maintenance of statewide database of program, portfolio, EDC and statewide energy and peak demand savings and cost-effectiveness reporting.		XX	
Develop and maintain secure SharePoint site for maintenance and exchange of confidential data and information with EDCs.		XX	
Primary Data Collection and Impact Analyses			
Primary data collection, site baseline and ex-post verification for EE projects and associated peak demand energy reductions.	XX		
Analyses and documentation of project, program and portfolio gross and net energy savings, including peak demand reductions.	XX		
Quality control and due diligence. Inspections of project sites and review of primary data and analyses, preparation of verified claimed savings.	XX		
Audit and assess EDC evaluator performance of EM&V Plans.		XX	
EDC Plan Review			
Review filed EDC EE&C plans and provide advice to Commission staff on ability of plans to cost-effectively meet targets (includes cost-effectiveness analyses)		XX	
Review of EDCs' EM&V plans and provide advice to Commission staff on ability of plans to adequately measure energy savings		XX	
Reporting (Annual and Semi-Annual)			
EDC semi-annual and annual reporting of EE and peak demand reductions, portfolio net and gross impacts, as applicable, cost-effectiveness, and EDC progress in reaching targets	XX		
Develop the Statewide semi-annual and annual report templates. Review EDCs' reports and advise the Commission of program and portfolio results: net and gross impacts, cost-effectiveness, and EDC progress in reaching targets. Prepare		XX	

Statewide Annual and Semi-annual Reports to the Commission.			
Review and approve Contractor’s Statewide Semi-Annual and Annual Reports.			XX
Review EDC and PUC Contractor’s Semi-Annual and Annual Reports on EE and associated peak demand reductions, net and gross savings impacts, cost-effectiveness, and EDC progress in reaching targets.			XX
Best Practices			
Participation in impact evaluation process review and improvement, as needed	XX		XX
Preparation of best practices recommendations for improvements to impact evaluation processes		XX	
Prepare best practices recommendations for program modifications and improvements		XX	
Other			
Prepare materials and reports in support of Commission analysis of energy efficiency and associated peak demand reduction programs		XX	
Assist in the organization of and conduct periodic and stakeholder meetings on evaluation results of EE and associated peak demand reductions, proposed changes to the TRM, etc.		XX	

Offeror Response

A. UPDATE AND REVISE AUDIT PLAN. The first phase of the contract will involve an update of the existing Audit Plan confirming the metrics and data formats EDCs must use and provide to the Contractor. The Contractor will update what data are required, how the data are to be measured, recorded and transmitted, and how the data will be audited.

The Contractor will be responsible for the following: a) update of the Audit Plan supporting verification of EDC plans and reports; b) review and update as needed EDC reporting requirements; c) confirmation that the EDC’s EM&V review processes are appropriate to verify energy savings with a focus on minimizing administrative and overhead costs; d) an updated plan for evaluation activities, including coordination with EDC independent evaluator audit processes; e) establish and maintain a secure SharePoint site for the exchange of non-public/confidential data and information between the SWE, EDCs and Commission; and f) identify best evaluation practices that should be implemented on a going forward basis. Additional formal and informal reporting requirements may be required upon request of the Project Officer.

The update and revision of the Audit Plan will begin immediately after contract execution. The Contractor will meet with representatives of TUS and other designated Commission staff, as needed, throughout the update of the draft Audit Plan to discuss details and

make decisions and will coordinate with EDCs, as necessary, to incorporate lessons learned and experience gained in Phase III. The update of the Audit Plan will not be considered final until approved by the Project Officer. The update of the Audit Plan will be completed by May 31, 2021, or earlier if possible.

The Audit Plan will be considered a “living document,” that can be revised on a regular basis throughout the project term. The Contractor, with approval of the Project Officer, can update the Audit Plan, as needed, to adjust to changes in EDC plans. It is anticipated that such updates will occur at such times that will allow EDCs ample opportunity to adjust their data collection and recording methods and meet their annual reporting requirements.

Offeror Response

B. AUDITING AND VERIFICATION. The Contractor will monitor and verify data collection, quality assurance and the results of each EDC plan on an ongoing basis in accordance with the revised Audit Plan approved under the contract. The Contractor will review each EDC’s plan tracking systems to assess each EDC’s ability to meet the Audit Plan and Commission-established targets in a cost-effective manner. The activities identified in the Audit Plan, and related to the Contractor’s monitoring and verifying data collection, quality assurance and results of each EDC plan will include, but are not limited, to the following:

- Ensuring the EDCs maintain an evaluation and plan management database.
- Conducting random spot verification coordinated with the EDC’s independent evaluator of EDC EM&V measurements and data.
- Acquiring data from EDCs and other sources and verifying EDC supplied data.
- Reviewing EDC’s plan to determine whether EDCs are meeting energy savings targets.
- Provide reasonable assurance that the claimed measures are being properly installed and utilized.
- Provide reasonable assurance that the installed measures are obtaining the claimed energy savings and associated peak demand reductions in accordance with the Commission approved TRM or other approved methods.
- Review and verify EDC’s performance by accompanying EDC evaluators on spot field inspections, in coordination with EDCs and Commission staff, using trained personnel. Where and when possible, alternative methods to onsite field inspections should be considered. Alternative methods may be more cost-effective, thereby reducing administrative and overhead costs.
- Spot verification, in coordination with EDC evaluators, utilizing site specific data collection methods on participating customer property.
- Auditing EDC survey instruments.
- Review and verify, in coordination with the EDCs, the EDC evaluators’ customer and trade-ally satisfaction surveys and reports.
- Coordinate the development of, and approve the methodologies for, net-to-gross studies to be performed by EDCs.

- Conducting limited market baseline studies to establish baselines as needed for the impact evaluations of specific programs.
- Analyzing verification data collected by EDC evaluators.
- Interfacing and coordinating with Commission staff and EDCs.
- Critiquing reported energy and peak demand savings utilizing field verification, Technical Reference Manual derived savings, approved custom measure derived savings, measurement and verification, and large-scale billing analyses.
- Verifying reported cost-effectiveness of EDC plans using the Commission-adopted TRC Test.
- Review and monitor EDCs' EM&V plans and execution of said plans.

Offeror Response

C. TECHNICAL REFERENCE MANUAL AND TRC TEST UPDATE. The Contractor will coordinate and participate in updates of the TRM, as necessary, as it relates to the calculation of savings for standard energy efficiency measures. These tasks involve working with the Commission, EDCs and other stakeholders to identify measures for inclusion in the TRM and to revise existing savings calculations based on primary research from Act 129 data from EM&V activities, secondary research sources, as well as changes in technology and/or government/industry standards and building codes.

The Contractor will be responsible for making recommendations to TUS staff and the Commission about changes to the TRM that are needed to ensure that the Commission's policy objectives are met regarding an up-to-date TRM.

The Commission's process for updating the TRM for the first year of the Phase IV EE&C programs is already complete as a Final Order was issued on August 8, 2019 at Docket No. M-2019-3006867, and effective beginning June 1, 2021.

In addition to any updates to the TRM that are to be effective for Phase IV, the contractor will be responsible for assisting with the update of the TRM to be effective as of the first year of a potential Phase V EE&C program should the Commission decide to implement a Phase V program. The schedule for the Phase V TRM update will be determined by the Commission at a later date. If possible, it is anticipated that the Phase V TRM update will be finalized at least a year in advance of June 1, 2026 so EDCs can prepare Phase V plans that are based on known Phase V TRM values.

The Contractor will coordinate and participate in a periodic review of the TRC Test utilized by the Commission and EDCs to determine program cost-effectiveness. The Commission issued a Final Implementation Order for the TRC Test for Phase IV of Act 129 EE&C programs on December 19, 2019 at Docket No. M-2019-3006868. Unless otherwise directed by the Project Officer, the contractor will be expected to assist the Commission in updating the TRC test during the first eight months of 2024 should the Commission decide to implement a Phase V Act 129 EE&C program. The 2024 update of the TRC test would be effective with the start of a potential Phase V program.

Offeror Response

D. DATA MANAGEMENT AND COMMISSION REPORTS. The Contractor will be responsible for maintaining program data and information, a secure SharePoint site, and to prepare semi-annual and annual reports on EE&C Program performance, based primarily on a review of EDC reports.

The Contractor will be responsible for designing, implementing and maintaining a statewide database of program and portfolio energy savings and cost data by EDC and for the state as a whole. The database shall contain information on energy and associated peak demand energy reductions and cost-effectiveness reporting.

The Contractor will be responsible for establishing a secure SharePoint site for the exchange of non-public/confidential data and information. The Contractor must maintain and archive electronic and paper files and data collected during the conduct of its duties using a secure SharePoint site.

Offeror Response

E. ENERGY EFFICIENCY BASELINE STUDIES. The Contractor will conduct updates to the Baseline Studies completed by the Phase III contractor which were used to inform the Commission regarding establishing mandates for Phase IV. The baseline studies are needed to support a Market Potential Analysis and Report to the Commission to provide guidance for a possible Phase V of Act 129 EE&C Programs for Pennsylvania.

Because of significant differences among customer groups, several distinct baseline studies may be needed for each EDC service territory. Bidders are encouraged to develop a proposal as to how they would develop cost-effective study plans and methodologies to support specific customer group targets or carve-outs in the SWE Market Potential Report.

The primary objectives of the baseline studies include the following:

- Select a representative random sample of select customer groups for participation in the baseline study;
- Profile electric customers groups at the sector and end use level;
- Determine the current saturation of energy using equipment in residential households, commercial, and industrial facilities, etc.
- Determine the current saturation of energy efficient HVAC and appliances and energy efficiency measures and practices in the customer sector;
- Determine average baseline levels of energy use for lighting, plug loads, space heating, space cooling and water heating by end use; and
- Determine the percent of energy using equipment by end use that is already high-efficiency equipment.

In Phase I, the Commission directed that each EDC service territory's residential sample and commercial and industrial sample be statistically significant at a confidence level of 90% and a margin of error of 10% at the EDC service territory level. Remaining consistent with this direction, bidders should include recommendations for confidence and precision levels for the baseline studies in their technical proposals.

It is anticipated that the Baseline Studies will be required to be completed by April 2024. The exact delivery date for the studies to the Commission shall be determined at a later date, consistent with the Commission's timeframe for implementing a potential Phase V of Act 129 EE&C programs.

Offeror Response

F. ENERGY EFFICIENCY POTENTIAL STUDY. Act 129 requires the Commission to periodically evaluate the costs and benefits of the EE&C program. The evaluation is to be consistent with the TRC Test. If the Commission determines that the benefits of the program exceed the costs, the Commission shall adopt additional required incremental reductions in consumption. See 66 Pa.C.S. § 2806.1(C)(3).

The Contractor will be responsible for conducting a statewide market potential study to determine the remaining opportunities for cost-effective electric energy efficiency savings in the service territories of the seven EDCs in Pennsylvania subject to Act 129. The study methodology should be detailed enough to result in recommendations to be contained in the report to the Commission for EDC-specific MWh targets for a potential Phase V of Act 129 EE&C programs. The study should focus on targets to be achieved between June 1, 2026 and May 31, 2031. The Market Potential Study should be completed no later than December 2024. The exact delivery date for the report to the Commission shall be determined at a later date, consistent with the Commission's timeframe for implementing a potential Phase IV of Act 129 EE&C programs.

This potential study will include, but is not limited to, the following:

- An assessment of the technical, economic, achievable and program potential for electric energy efficiency measures for the Commonwealth of Pennsylvania and each EDC service territory for the period June 1, 2026 to May 31, 2031.
- An assessment and characterization of existing electric end-use baseline data on a customer class (e.g., residential; residential low income; commercial; industrial; and governmental/non-profit/institutional entities) basis.
- An overview of the estimated share of electricity use by customer class and major end uses.
- A listing of available Pennsylvania specific load shapes for each customer class.

- A listing of available information about total yearly sales of selected, key energy efficiency equipment, saturation levels of this equipment by customer class, and useful lives of the equipment.
- An assessment of the saturation of other energy efficiency measures, such as efficient industrial processes.
- An assessment of the prevalence of energy conservation behaviors of end users.
- An analysis of the cost-effectiveness (from a statewide perspective) of the achievable program potential, as a whole, for the period June 1, 2026 to May 31, 2031.
- An assessment of future energy and load reduction potential to include target dates for achieving the targets.

Offeror Response

G. PEAK DEMAND REDUCTION MARKET POTENTIAL STUDY. The Commission, as part of its planning for a potential Phase IV of the Act 129 Energy Efficiency and Conservation (EE&C) Program, directed the Phase III SWE to conduct an energy efficiency and peak demand reduction market potential study to determine the opportunities for cost-effective electricity savings in the service areas of the seven Pennsylvania EDCs that are subject to the energy efficiency requirements of Act 129. The Commission also directed the SWE to perform a demand response potential study to determine if there is potential for cost-effective dispatchable demand response as a component of the EE&C Program.¹

The Peak Demand Reduction Market Potential Study, to be performed as part of this contract, will inform the Commission on the potential for Phase V peak demand reduction targets and budgets to be included in a potential Phase V Act 129 Implementation Order. The Peak Demand Reduction Market Potential Study must be closely coordinated with the Commission's planning cycle for a potential Phase V of EE&C Programs. At this time, we estimate that the report would need to be provided to the Commission no later than December 2024. The report should recommend EDC-specific reduction targets in megawatts and percentage reductions as well as a statewide weighted average percentage reduction. The Peak Demand Reduction Market Potential Study should provide annual estimates of technical, economic, achievable and program potential for each EDC service territory for the period June 1, 2026 through May 31, 2031.

Offeror Response

H. MEETINGS AND OTHER REQUIREMENTS. The Contractor will be required to participate in meetings with the Commission, Act 129 stakeholders and EDC representatives

¹ See, *Request for Proposals – Act 129 Statewide Evaluator*, RFP-2015-3, Pennsylvania Public Utility Commission – Bureau of Technical Utility Services, (October 15, 2015).

(EE&C Program Managers and EM&V consultants). The following types of meetings are anticipated:

- Weekly or biweekly conference calls with SWE team leaders and TUS staff. These calls are typically about one-half hour in duration.
- Occasional meetings at the Commission, or held virtually as may be necessary, with Act 129 stakeholders. The SWE may lead these meetings (i.e. updating the TRM, baseline and market potential studies, updating the TRC) to be held in Harrisburg, Pennsylvania. These meetings may be up to a full day in duration and include PowerPoint presentations by the SWE as well as questions and answers. On average, two such stakeholder meetings could be held per year.
- Occasional Program Evaluation Group (PEG) meetings with TUS staff and EDC representatives, on an as needed basis but not to exceed four per year. When practical, these meetings should be held virtually to minimize travel and associated administrative and overhead costs. These meetings often involve PowerPoint presentations by the SWE and may be up to a full day in duration.
- The SWE should plan on one in-person meeting per year in Harrisburg with TUS staff, Commissioners' assistants and perhaps Commissioners. While not an absolute requirement, these meetings are held to discuss contractor performance and prioritize activities for the upcoming year. If necessary, expect that these meetings will require about a half day in duration and typically involve a PowerPoint presentation by the SWE.
- Other in-person or conference call meetings may be required with TUS staff and/or the Project Officer, as needed. The meetings may involve topics such as project budget review and status on special research projects.
- Meetings with EDC Program Managers and EM&V consultants will occur, as needed. These meetings may occasionally be in person but more commonly by conference call. Topics may include the development of custom measure protocols, evaluation, audit planning or feedback.

In addition to meeting activity, the Commission may require the SWE to design and develop materials needed for Commission discussions, workshops, reports, etc. The Commission may also require the SWE to provide any requested Act 129 Phase IV data for use in analysis and/or coordinated state agency projects that may benefit Act 129. The Commission may also request the SWE to provide a lookback at data from prior Act 129 phases.

Offeror Response

III-5. Reports and Program Control.

The Contractor will be responsible for preparing an annual report for the Commission. The Contractor's annual reporting process shall be as follows (all due dates require submission to the appropriate parties by 4pm of the due date):

- (1) EDCs provide their Semi-Annual Report to the Commission on January 15.

- (2) SWE provides their Semi-Annual Report on each EDC's Semi-Annual to the Commission by February 28.
- (3) EDCs provide their Final Annual Report to the Commission on September 30, following the conclusion of the EE&C program year on May 31.
- (4) Contractor will provide a draft annual report on each EDC's Final Annual Report to the EDCs by October 19.
- (5) EDCs will check the data in the draft annual report and provide factual corrections to the Contractor by October 26.
- (6) The Contractor will review the EDCs' submitted corrections and provide the annual report to the Project Officer by November 2.
- (7) The Project Officer will coordinate Commission review of the annual report and provide comments to the Contractor by November 16.
- (8) The Contractor will provide a final annual report on each EDC plan and the program, as a whole, to the Project Officer by November 30. Final Annual Reports will be provided to the Commission by November 30, except for the fifth (final) annual report of the phase which will be rolled into the Final Five-Year Energy Efficiency and Conservation Program Assessment Report. The annual reports may form the basis for Commission annual reports required to be provided to the legislature each year.
- (9) The contractor will provide a Final Five-Year Energy Efficiency and Conservation Program Assessment Report to the Commission by November 30. This report will include the content for the 2025/2026 program year in lieu of a 2025/2026 Final Annual Report.
- (10) The Contractor shall provide an electronic version of the Final Reports to the Commission and the Contracting Entity for disbursal to the EDCs in a format that is compatible with the Commission's network software.

The Annual Reports and the Final Five-Year Report will include, but are not limited to, the following:

- An analysis of each EDCs' plan expenditures and an assessment of the programs expenditures.
- An analysis of each EDCs' protocol for measurement and verification of energy savings attributable to its plan, in accordance with the Commission adopted TRM and approved custom measures.
- An analysis of the cost-effectiveness of each EDCs' expenditures in accordance with the Commission adopted Total Resource Cost Test Manual.
- A review of Technical Reference Manual information and savings values with suggestions for possible revisions and additions.

- A review of the Total Resource Cost Test Manual with suggestions for possible revisions and additions.
- A review of any proposed revisions and updates to EDC plans.

In addition to annual reports discussed above, the Contractor will be responsible for preparing a Semi-Annual Report by February 28 of each year that contains as much evaluated savings as possible for the first six months of each program year. Where evaluated savings are not available, the Semi-Annual Report should contain as much claimed savings to date as possible. Each Semi-Annual Report shall provide updates on energy (MWh) and associated peak demand (MW) savings, impact evaluations and cost effectiveness of EE&C programs by utility. The Semi-Annual Reports are based on EDCs' semiannual reports which are due on January 15.

The Contractor may be asked to provide expert testimony regarding the conclusions contained in the annual, Final Five-Year and semiannual reports.

Offeror Response

III-6. Other Requirements.

- A. Expert Testimony.** Contractor must be able to support, orally and in writing, the professional findings and conclusions of the Contractor, for internal discussions as well as for adversarial, on-the-record proceedings.

Please note that Section I.E of the contract in Part VI states:

Providing Testimony in Adversarial Proceedings. The Commission will pay 125% of the usual hourly rates (rather than the usual 100% rate) for staff directly engaged in providing testimonial support (whether written or oral) in an adversarial proceeding.

Therefore, do not include any cost “inflater” in your cost proposal to cover providing such testimony in adversarial proceedings.

Offeror Response

- B. Disaster Recovery/Long-term Storage of Records.** Indicate generally your backup systems and long-term document/electronic backup systems. Work on this project must be kept for at least ten years after its creation in a secure manner, available within a reasonable timeframe if required by TUS. Prior to destruction of such materials, the Contractor must notify the Commission to allow the Commission to take custody of such materials, if it so chooses.

Offeror Response

C. Disclosure of Potential Conflicts of Interest. Other than in performance of duties under this contract, upon proposal submission **and throughout the contractual term** the Contractor or any subcontractors, or any parent or related entities to the Contractor or any subcontractors, or any of the Contractor's or any subcontractors' employees, must disclose to the Project Officer any work for, or any payment of any kind by, any party which seeks alternative energy credits. The Proposer that performs such prior work is required to explain, in detail, the measures that will be taken to avoid any conflict of interest or appearance of impartiality that may arise as a consequence of performing work under this contract. The Issuing Office will determine, on a case-by-case basis, whether such prior activity creates an actual or potential conflict of interest. If the Project Officer deems the activity to be a conflict of interest, the Contractor agrees to take appropriate steps as directed by the Project Officer to eliminate the conflict.

Offeror Response

III-7. Objections and Additions to Contract Terms and Conditions.

The Offeror will identify which, if any, of the terms and conditions it would like to negotiate and what additional terms and conditions the Offeror would like to add to the contract terms and conditions. The Offeror's failure to make a submission under this paragraph will result in its waiving its right to do so later, but the Issuing Office may consider late objections and requests for additions if to do so, in the Issuing Office's sole discretion, would be in the best interest of the Commonwealth.

The Issuing Office may, in its sole discretion, accept or reject any requested changes to the contract terms and conditions. The Offeror shall not request changes to the other provisions of the RFP, nor shall the Offeror request to completely substitute its own terms and conditions. All terms and conditions must appear in one integrated contract. The Issuing Office will not accept references to the Offeror's, or any other, online guides or online terms and conditions contained in any proposal.

Regardless of any objections set out in its proposal, the Offeror must submit its proposal, including the cost proposal, on the basis of the terms and conditions set out in the RFP and draft contract. The Issuing Office may reject any proposal that is conditioned on the negotiation of the contract terms and conditions.

Offeror Response

NOTE: DO NOT INCLUDE COST INFORMATION (BILLABLE RATES OR OTHER COSTS) IN THE TECHNICAL SUMMITAL

PART IV
COST SUBMITTAL

IV-1. Cost Submittal. The information requested in this **Part IV** shall constitute the Cost Submittal.

The total cost for the entire contract must be clearly provided as a total price not-to-exceed contract cost.

In addition, the total price not-to-exceed cost for each year will be listed separately, listed as year 1 through 6. These must add up to the total price not-to-exceed contract cost.

Year 1 – Contract Effective Date (assume 3-1-21) – June 30, 2022.
Year 2 – July 1, 2022 – June 30, 2023.
Year 3 – July 1, 2023 – June 30, 2024.
Year 4 – July 1, 2024 – June 30, 2025.
Year 5 – July 1, 2025 – June 30, 2026
Year 6 – July 1, 2026 – February 28, 2027.

List all employees who will assigned to work on this project, indicating their billable rate for each of the six-year periods.

Indicate that travel and subsistence costs will conform to the requirements of the most current version of the Commonwealth Management Directives 230.10, *Travel and Subsistence Allowances*.

List all other costs related to work on this project, indicating their costs for each of the six-year periods.

The percentage of commitment to Small Diverse Businesses and Small Businesses should not be stated in the Cost Submittal. Offerors should **not** include any assumptions in their cost submittals. If the Offeror includes assumptions in its cost submittal, the Issuing Office may reject the proposal. Offerors should direct in writing to the Issuing Office pursuant to **Part I, Section I-9** of this RFP any questions about whether a cost or other component is included or applies. All Offerors will then have the benefit of the Issuing Office's written answer so that all proposals are submitted on the same basis.

The Issuing Office will reimburse the selected Offeror for work satisfactorily performed after execution of a written contract and the start of the contract term, in accordance with contract requirements, and only after the Issuing Office has issued a notice to proceed.

PART V

SMALL DIVERSE BUSINESS AND SMALL BUSINESS PARTICIPATION SUBMITTAL

V-1. Small Diverse Business and Small Business General Information. The Issuing Office encourages participation by Small Diverse Businesses and Small Businesses as prime contractors, and encourages all prime contractors to make significant commitments to use Small Diverse Businesses and Small Businesses as subcontractors and suppliers.

A Small Business must meet each of the following requirements:

- The business must be a for-profit, United States business;
- The business must be independently owned;
- The business may not be dominant in its field of operation;
- The business may not employ more than 100 full-time or full-time equivalent employees;
- The business, by type, may not exceed the following three-year average gross sales:
 - Procurement Goods and Services: \$20 million
 - Construction: \$20 million
 - Building Design Services: \$7 million
 - Information Technology Goods and Services: \$25 million

For credit in the RFP scoring process, a Small Business must complete the DGS/BDISBO self-certification process. Additional information on this process can be found at:

<http://www.dgs.pa.gov/Businesses/Small%20Diverse%20Business%20Program/Pages/default.aspx>

A Small Diverse Business is a DGS-verified minority-owned small business, woman-owned small business, veteran-owned small business, service-disabled veteran-owned small business, LGBT-owned small business, Disability-owned small business, or other small businesses as approved by DGS, that are owned and controlled by a majority of persons, not limited to members of minority groups, who have been deprived of the opportunity to develop and maintain a competitive position in the economy because of social disadvantages.

For credit in the RFP scoring process, a Small Diverse Business must complete the DGS verification process. Additional information on this process can be found at:

<http://www.dgs.pa.gov/Businesses/Small%20Diverse%20Business%20Program/Pages/default.aspx>

An Offeror that qualifies as a Small Diverse Business or a Small Business and submits a proposal as a prime contractor is not prohibited from being included as a subcontractor in separate proposals submitted by other Offerors.

A Small Diverse Business or Small Business may be included as a subcontractor with as many prime contractors as it chooses in separate proposals.

The Department's directory of self-certified Small Businesses and DGS/BDISBO-verified Small Diverse Businesses can be accessed from:

<http://www.dgs.internet.state.pa.us/suppliersearch>

Questions regarding the Small Diverse Business and Small Business Programs, including questions about the self-certification and verification processes can be directed to:

Department of General Services
Bureau of Diversity, Inclusion and Small Business Opportunities (BDISBO)
Room 601, North Office Building
Harrisburg, PA 17125
Phone: (717) 783-3119
Fax: (717) 787-7052
Email: RA-BDISBOVerification@pa.gov
Website: www.dgs.pa.gov

V-2. Small Diverse Business and Small Business (SDB/SB) Participation Submittal. All Offerors are required to submit the Small Diverse Business and Small Business Participation Submittal Form and related Letter(s) of Intent (available at <http://www.dgs.pa.gov/layouts/download.aspx?SourceUrl=http://www.dgs.pa.gov/Documents/Procurement%20Forms/Small%20Diverse%20Business%20and%20Small%20Business%20Participation%20Submittal.xlsx>) as described in Part I, Section I-11. To receive points for Small Diverse Business or Small Business participation commitments, the Small Diverse Business or Small Business must be listed in the Department's directory of self-certified Small Businesses and DGS/BDISBO-verified Small Diverse Businesses as of the proposal due date and time. BDISBO reserves the right to adjust overall Small Diverse Business or Small Business commitments to correctly align with the Small Diverse Business or Small Business status of a prime contractor or subcontractor as of the solicitation due date and time, and also to reflect the correct sum of individual subcontracting commitments listed within the Letters of Intent.

- A. Offerors must indicate their status as a Small Diverse Business and as a Small Business through selection of the appropriate checkboxes.
- B. Offerors must include a numerical percentage which represents the total percentage of the total cost in the Cost Submittal that the Offeror commits to paying to Small Diverse Businesses and Small Businesses as subcontractors.
- C. Offerors must include a listing of and required information for each of the Small Diverse Businesses and/or Small Businesses with whom they will subcontract to achieve the participation percentages outlined on the Small Diverse Business and Small Business Participation Submittal.

D. Offerors must include a Letter of Intent (available at the following link: http://www.dgs.pa.gov/_layouts/download.aspx?SourceUrl=http://www.dgs.pa.gov/Documents/Procurement%20Forms/Small%20Diverse%20Business%20and%20Small%20Business%20Participation%20Submittal.xlsx) signed by both the Offeror and the Small Diverse Business or Small Business for each of the Small Diverse Businesses and Small Businesses identified in the Small Diverse Business and Small Business Participation Submittal form. At minimum, the Letter of Intent must include the following:

1. The fixed numerical percentage commitment and associated estimated dollar value of the commitment made to the Small Diverse Business or Small Business; and
2. A description of the services or supplies the Small Diverse Business or Small Business will provide; and
3. The timeframe during the initial contract term and any extensions, options, and renewals when the Small Diverse Business or Small Business will perform or provide the services and/or supplies; and
4. The name and telephone number of the Offeror's point of contact for Small Diverse Business and Small Business participation; and
5. The name, address, and telephone number of the primary contact person for the Small Diverse Business or Small Business.

E. Each Small Diverse Business and Small Business commitment which is credited by BDISBO along with the overall percentage of Small Diverse Business and Small Business commitments will become contractual obligations of the selected Offeror.

NOTE: Offerors will not receive credit for any commitments for which information as above is not included in the Small Diverse Business and Small Business Participation Submittal. Offerors will not receive credit for stating that after the contract is awarded they will find a Small Diverse Business or Small Business.

NOTE: Equal employment opportunity and contract compliance statements referring to company equal employment opportunity policies or past contract compliance practices do not constitute proof of Small Diverse Business and/or Small Business Status or entitle an Offeror to receive credit for Small Diverse Business or Small Business participation.

V-3. Contract Requirements—Small Diverse Business and Small Business Participation.

All contracts containing Small Diverse Business and Small Business Participation must contain the following contract provisions to be maintained through the initial contract term and any subsequent options or renewals:

- A. Each Small Diverse Business and Small Business commitment which was credited by BDISBO and the total percentage of such Small Diverse Business and Small Business commitments made at the time of proposal submittal, BAFO or contract negotiations, as applicable, become contractual obligations of the selected Offeror upon execution of its contract with the Commonwealth.
- B. All Small Diverse Business and Small Business subcontractors credited by BDISBO must perform at least 50% of the work subcontracted to them.
- C. The individual percentage commitments made to Small Diverse Businesses and Small Businesses cannot be altered without written approval from BDISBO.
- D. Small Diverse Business and Small Business commitments must be maintained in the event the contract is assigned to another prime contractor.
- E. The selected Offeror and each Small Diverse Business and Small Business for which a commitment was credited by BDISBO must submit a final, definitive subcontract agreement signed by the selected Offeror and the Small Diverse Business and/or Small Business to BDISBO within 30 days of the final execution date of the Commonwealth contract. A Model Subcontract Agreement which may be used to satisfy this requirement – **Model Form of Small Diverse and Small Business Subcontract Agreement** – is available at the following link:
http://www.dgs.pa.gov/_layouts/download.aspx?SourceUrl=http://www.dgs.pa.gov/Documents/Procurement%20Forms/Model%20Form%20Subcontract%20Agreement.docx).
The subcontract must contain:
 - 1. The specific work, supplies or services the Small Diverse Business and/or Small Business will perform; location for work performed; how the work, supplies or services relate to the project; and the specific timeframe during the initial term and any extensions, options and renewals of the prime contract when the work, supplies or services will be provided or performed.
 - 2. The fixed percentage commitment and associated estimated dollar value that each Small Diverse Business and/or Small Business will receive based on the final negotiated cost for the initial term of the prime contract.
 - 3. Payment terms indicating that the Small Diverse Business and/or Small Business will be paid for work satisfactorily completed within 14 days of the selected Offeror's receipt of payment from the Commonwealth for such work.
 - 4. Commercially reasonable terms for the applicable business/industry that are no less favorable than the terms of the selected Offeror's contract with the Commonwealth and that do not place disproportionate risk on the Small Diverse Business and/or Small Business relative to the nature and level of the Small Diverse Business' and/or Small Business' participation in the project.

- F.** If the selected Offeror and a Small Diverse Business or Small Business credited by BDISBO cannot agree upon a definitive subcontract within 30 days of the final execution date of the Commonwealth contract, the selected Offeror must notify BDISBO.
- G.** The Selected Offeror shall complete the Prime Contractor's Quarterly Utilization Report and submit it to the contracting officer of the Issuing Office and BDISBO within ten (10) business days at the end of each quarter of the contract term and any subsequent options or renewals. This information will be used to track and confirm the actual dollar amount paid to Small Diverse Business and Small Business subcontractors and suppliers and will serve as a record of fulfillment of the contractual commitment. If there was no activity during the quarter, the form must be completed by stating "No activity in this quarter." A late fee of \$100.00 per day may be assessed against the Selected Offeror if the Utilization Report is not submitted in accordance with the schedule above.
- H.** The Selected Offeror shall notify the Contracting Officer of the Issuing Office and BDISBO when circumstances arise that may negatively impact the selected Offeror's ability to comply with Small Diverse Business and/or Small Business commitments and to provide a corrective action plan. Disputes will be decided by the Issuing Office and DGS.
- I.** If the Selected Offeror fails to satisfy its Small Diverse Business and/or Small Business commitment(s), it may be subject to a range of sanctions BDISBO deems appropriate. Such sanctions include, but are not limited to, one or more of the following: a determination that the selected Offeror is not responsible under the Contractor Responsibility Program; withholding of payments; suspension or termination of the contract together with consequential damages; revocation of the selected Offeror's Small Diverse Business status and/or Small Business status; and/or suspension or debarment from future contracting opportunities with the Commonwealth.

PART VI

2021 Act 129 Statewide Evaluator Contract

This Contract is entered into by _____ (“Contractor”), EEC Pennsylvania Evaluations (“Contracting Entity”), and the Pennsylvania Public Utility Commission (“Commission”).

Incorporation by Reference. The Request for Proposal and all exhibits, appendices, addenda, and other attachments thereto, the Contractor’s Proposal and all exhibits, appendices, addenda, and other attachments thereto, the written questions and answers posted by the Commission to its website, and Exhibits 1 through 5 to this Contract, are all hereby incorporated into this Contract by reference.

I. Covenants of the Parties.

The parties to this Contract agree and promise that:

- A. Subject in all respects to the terms and conditions of this Contract and to the duties and limitations contained in the statutory and common law of the Commonwealth of Pennsylvania, the Contractor shall perform as the Act 129 Statewide Evaluator for the Commission. The duties of the Act 129 Statewide Evaluator shall be completed as outlined in and in accordance with the promises, warranties and representations contained in the Contractor’s Proposal (“Proposal”) and the Request For Proposals (“RFP”). The RFP and all exhibits, appendices, addenda, and other attachments thereto, and the Contractor’s Proposal and all exhibits, appendices, addenda, and other attachments thereto are hereby incorporated into this Contract by reference.
- B. The EDCs shall cooperate with the efforts of the Contractor and the Contracting Entity shall pay the Contractor promptly upon submission to it of invoices for payment as described below. Subject to the terms and conditions of this Contract and the statutory and common law of Pennsylvania, Duquesne Light Company, Metropolitan Edison Company, PECO Energy Company, Pennsylvania Electric Company, Pennsylvania Power Company, PPL Electric Utilities Corporation, and West Penn Power Company (“EDC or EDCs”) shall make available to the Contractor all employees with the direct knowledge and data necessary for the Contractor to evaluate expeditiously and draw conclusions. Every effort shall be made by the parties to limit disruption to both the EDCs’ ongoing operations and to the performance of the Contractor’s work plan contained in the Proposal and RFP.
- C. The Commission by its agent, the Project Officer and other designated staff, as described below, shall have the right and opportunity to participate actively in the activities of the Contractor and the EDCs, and to this end shall have immediate access to all data, models, and other materials or information provided to the Contractor and the EDCs except that the Contractor may withhold such data, models, materials, or information to which the Commission does not otherwise have a right of access or inspection. The Commission

shall be advised if any data, models, materials, or information is being so designated and may contest such designation.

- D. The parties agree to communicate to keep one another promptly informed of any material problems or issues related to the contract.
- E. Providing Testimony in Adversarial Proceedings. The Commission will pay 125% of the usual hourly rates (rather than the usual 100% rate) for staff directly engaged in providing testimonial support (whether written or oral) in an adversarial proceeding.

II. Evaluation Procedures.

A. Project Officer and Party Representatives.

1. The Commission has designated **Darren Gill**, Bureau of Technical Utility Services, (717) 783-5244, dgill@pa.gov (and/or his designated alternative) as its staff contact (“Project Officer”) and has authorized him/her to act on behalf of the Commission under this Contract. The Project Officer may appoint members of the Commission staff or its designees to represent him/her as appropriate.
2. The Contracting Entity has designated **Donna M. J. Clark, Esq.**, (717) 901-0631, dclark@energypa.org as its staff contact (“Contracting Entity’s Representative”) and has authorized her to act as the lead contact on behalf of the Contracting Entity under this Contract.
3. Each EDC designates the following person as its staff contact (“EDC Representative”) and has authorized him/her to act as the lead contact on behalf of the EDC under this Contract:

Duquesne Light Company:

Metropolitan Edison Company:

PECO Energy Company:

Pennsylvania Electric Company:

Pennsylvania Power Company:

PPL Electric Utilities Corporation:

West Penn Power Company:

Contractor will coordinate with each individual EDC Representative when working with a particular EDC. Each EDC Representative shall be given advance notification

of the identities of Commission and Contractor personnel who will be on that EDC's premises and the dates of their visits to specific EDC facilities.

4. The Contractor has designated _____ as its staff contact ("Contractor Representative") and has authorized him/her to act as the lead contact on behalf of the Contractor under this Contract.
5. The Project Officer and Contracting Entity's Representative shall have primary responsibility and authority on behalf of the Commission and the EDCs, respectively, to administer this contract and to agree upon procedures for coordinating the efforts of the EDCs and the Contractor.
6. The parties agree to communicate fully with each other through the designated representatives and to keep each other informed of all pertinent matters and developments relating to the Act 129 Statewide Evaluator Project.
7. The Contractor shall provide the Project Officer with reasonable notice of and opportunity to attend all high-level planning meetings with the EDCs.
8. The EDCs will provide an atmosphere conducive to the free flow of information between the Contractor and the EDCs' employees. Any process which may inhibit employees from expressing their ideas, opinions or suggestions shall be discouraged.

B. Expenses and Payment.

1. Payment. As provided hereafter.
2. The Project Officer shall have the right and opportunity to approve, in whole or in part, each invoice. The basis for the Project Officer's approval shall be a finding that the expenses are reasonable, necessary and correct and billed in accordance with the provisions of this Contract. Such approval or payment may be withheld if the following items are not included in the invoice:
 - a) A list of the individuals, by name and title, who have worked during the invoice period;
 - b) The hourly rates of these individuals as stated in the Proposal;
 - c) The number of hours spent by each individual;
 - d) A listing by category of materials and supplies purchased during the invoice period;
 - e) A list of transportation lodging, and meal expenses by each individual incurring such costs during the invoice period and the basis for calculating such costs; and
 - f) The specific dates when services were rendered.

3. The approval of the Project Officer may also be withheld as to any costs that are not just, reasonable, or in conformity with costs in the Proposal.
4. The total amount paid the Contractor under this Contract shall not exceed the following amounts except as provided in the RFP regarding approved additional expenditures.

Total Contract Price: \$

5. No expenditures will be reimbursed if they were incurred before the effective date of this contract.
6. All charges for services and other costs charged by the Contractor are subject to review at any time by the Contracting Entity and the Commission.
7. It is presumed that the EDCs will cooperate fully with the Contractor and will provide all relevant data, as well as all employees with the direct knowledge necessary for the Contractor to perform expeditiously its evaluation and draw conclusions. Total payments under this contract will not exceed the total cost quoted in the proposal. However, the total cost may be exceeded if, after the draft Annual and/or Five-Year Reports are released, the EDCs come forth with substantial quantities of new or additional information requiring significant review and analysis by the Contractor. Those costs will be paid in accordance with the payment terms of the Contract; however, those costs will be in addition to and billed separately from the base contract amount at the salary rates provided in the Contractor's Proposal.

III. Other Rights of Parties.

A. Commission's Right to Disapprove Expenditures.

The Commission shall have the right to approve or disapprove invoice expenditures and may adjust payment to the Contractor for the amount of any disapproved expenditure. The Contractor will not be paid for any cost incurred for services not in compliance with the terms of this contract. Nothing herein shall preclude the Contracting Entity from questioning the reasonableness or propriety of any invoice, or any portion of an invoice, submitted by Contractor, prior to payment of the same.

B. Commission's Right to Make Amendments and Changes to Contract.

Subject to the terms and conditions of this Contract and to the statutory and common law of the Commonwealth of Pennsylvania, the Commission shall have the right to make changes in the Statement of Work in the Proposal, provided that any such changes are within the general scope of the Statement of Work, that payment for work performed under such changes shall be made pursuant to the Proposal, and that the total cost of this contract is not exceeded. Approval of the Contracting Entity for such changes shall not be required; however, prior to making any such change the Commission will consult with the Contracting Entity.

C. Confidentiality.

1. The parties recognize that it will be necessary for the Contractor to review certain proprietary information of the EDCs. Accordingly, the Contractor, the EDCs, and the Commission have or will execute Nondisclosure Agreements that are substantially similar to the Nondisclosure Agreement attached hereto as Exhibit 1. The Nondisclosure Agreement, including any Nondisclosure Agreement utilized by any EDC which may differ from Exhibit 1, is hereby incorporated into this Contract by reference.
2. The executed Contract, the Contractor's Proposal, and the Annual Report and Five-Year Report may be released by the Commission, subject to confidentiality restrictions. Any other information that is not otherwise public will be released only after consent of the Contractor, the Contracting Entity, and the EDCs.
3. If the release is to the media, the Commission agrees to inform the Contracting Entity and the relevant EDCs prior to such release and to provide a copy of the release to the Contracting Entity and the relevant EDCs.
4. No release of any information concerning the Act 129 Statewide Evaluator Project other than the existence and nature of the Contractor may be made by the Contractor, the Contracting Entity, or the EDCs without the prior written approval of the Commission's Project Officer or his/her designee.

F. Termination.

The Commission reserves the right to terminate this Contract with thirty (30) days' notice to the Contractor if the Contractor's performance is, in the sole view of the Commission, unsatisfactory and not in keeping with the Proposal and the RFP, and/or for any material breach of the terms contained herein. In the event of a material breach of the Contract terms, the Project Officer shall inform the Contractor's Representative of the breach. The Contractor shall have ten days in which to cure the breach to the satisfaction of the Commission. This provision shall not be construed as a limitation on remedies by the Commission or the Contracting Entity for breach of this Contract by the Contractor.

IV. Other Agreements by the Parties.

A. Status of Contractor.

The parties hereto agree that the Contractor and any agents and employees of the Contractor shall act, in the performance of this Contract, in an independent capacity and not as officers, employees or agents of the Commission, the Contracting Entity, or the EDCs.

B. Interest of Contractor.

The Contractor warrants that it presently has no interest and promises that it shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its services hereunder. The Contractor agrees that in the performance of this Contract, it shall not knowingly employ any person having such interest. The Contractor further certifies that no member of the board of the Contractor or any of its officers or directors have such an adverse interest. Contractor personnel who perform the services are employees of the Contractor (or its subcontractors) and the Contractor will be solely responsible for payment of compensation to such persons. The Contractor agrees to indemnify, defend, and hold harmless the Commission, the Contracting Entity, or any EDC for any claim asserted against the Commission, the Contracting Entity, or any EDC alleging that the Commission, the Contracting Entity, or any EDC is an employer, co-employer or joint employer of any Contractor personnel. The Contractor will assume full responsibility for payment of all federal, state, provincial and local taxes, withholding or contributions imposed or required under unemployment insurance, social security and income tax laws with respect to such persons. Should the Commission, the Contracting Entity, or any EDC be required to pay any amount to a governmental agency for failure to withhold any amount as may be required by law, the Contractor agrees to indemnify, defend and hold harmless the Commission, the Contracting Entity, or any EDC for any amount so paid, including interest, penalties and fines. The Contractor is not an agent of the Commission, the Contracting Entity, or any EDC and has no authority to represent the Commission, the Contracting Entity, or any EDC as to any matters, except as expressly authorized in this Contract.

C. Disputes.

All questions arising respecting any matter pertaining to this Contract or any part thereof or any breach of contract arising thereunder shall be referred to the Project Officer. Any dispute which cannot be settled by negotiations after submission to the Project Officer shall then be submitted to the Commission for resolution. The provisions of this paragraph shall not be construed to limit the remedies of the Commission, the Contractor, and the Contracting Entity for breach of this Contract, nor shall it limit the Commission, the Contractor, and the Contracting Entity's rights to appeal to the Commonwealth Court after resolution by the Commission. This provision shall not be construed as an arbitration provision that provides the Commission with arbitration powers.

D. Conflicts between the Contract, the RFP, and the Proposal.

Whenever a provision of the Proposal conflicts with the Contract or the RFP, the provisions of the Contract and the RFP will prevail over the Proposal. If there is a conflict between the Contract and the RFP, the Contract will prevail over the RFP.

G. Integration Clause.

This Contract, and all exhibits, appendices, addenda, and other attachments thereto, constitutes the entire agreement between the parties, subject to the provisions of

paragraph F "Amendments" below. No other agreements, whether oral or written, or outside conditions, warranties, or understandings regarding the subject matter of this Contract shall be deemed to exist for purposes of interpreting this Contract, nor shall any such agreements be enforceable against the Commission, the Contracting Entity, the Contractor, or any EDC.

H. Amendments.

No amendment or modification changing the scope or terms of this Contract shall have any force or effect unless it is in writing and signed by all parties.

I. Applicable Law.

This Contract shall be interpreted, construed, and governed by the laws of the Commonwealth of Pennsylvania. All Parties expressly submit to the personal and subject matter jurisdiction of the Courts of the Commonwealth of Pennsylvania.

J. Assignment and Delegation.

Neither this Contract nor any of its benefits or duties may be assigned or delegated by subcontract or otherwise, except for those subcontracts specifically identified by the Proposal, without prior written approval by the Commission, who shall first consult with the Contracting Entity. Any subcontract shall contain all of the provisions of this Contract.

K. Severability.

If any provision of this Contract is invalid, the remainder of the Contract shall not be affected thereby if the essential terms and conditions of the Contract remain valid, legal and enforceable.

L. Non-Waiver.

No provision of this Contract can be waived by any party unless made in writing and signed by the party against whom waiver is sought; nor shall the failure by any party to, at any time or on multiple occasions, require performance of any provision hereof be construed as a waiver of future enforcement thereof; nor shall waiver by any party of any breach hereof be construed as a waiver of any future breach.

M. Time of the Essence.

Time is of the essence in this Contract and any failure to perform any of the terms hereof in the reasonable time and manner specified shall be deemed a breach of this contract.

N. Effective Dates.

The effective date of this Contract shall be fixed by the Issuing Office after the Contract has been fully executed by the Contractor, the Contracting Entity, and the Commission and all approvals required by the Commonwealth contracting procedures have been obtained.

O. Insurance.

During the performance of the work covered by this Contract, the Contractor shall maintain the following minimum insurance coverage at no additional cost to the Commission, the Contracting Entity, or the EDCs:

1. Workers' Compensation Insurance as required by law.
2. Employer's Liability Insurance (bodily injury) of \$1,000,000 per accident, and Employer's Liability Insurance (occupational diseases) of \$1,000,000 per person and \$2,000,000 in the general aggregate.
3. Comprehensive General Liability Insurance of \$1,000,000 each person; \$1,000,000 each occurrence for bodily injuries; and \$1,000,000 for property damage.
4. Comprehensive Automobile Liability Insurance covering all owned and hired vehicles of \$1,000,000 each person, \$1,000,000 each accident for bodily injuries, and \$1,000,000 each accident for property damage.
5. Professional Services "Errors and Omissions" insurance of \$1,000,000.

The insurance called for above is subject to the normal limitations and exclusions applying to each type of insurance; provided, however, that first dollar coverage shall be provided for each type. The Commission, the Contracting Entity, and all the EDCs (each listed individually by name) will be named as an additional insured on the policies referred to in 2, 3, 4, and 5 above and such insurance shall be endorsed to require the insurer to furnish the Commission, the Contracting Entity and the EDCs with ten (10) days written notice prior to the effective date of any cancellation of insurance.

Upon request, the Contractor shall furnish the Commission, the Contracting Entity, or the EDCs with certificates or other documentary evidence showing that the insurance to be carried by the Contractor in accordance with this paragraph has been arranged.

P. Indemnity.

The Contractor agrees and undertakes to indemnify, defend, and hold harmless the Commission, the Contracting Entity, the EDCs, and their respective agents and employees and subcontractors against all liabilities, claims, damages, causes of action, judgments, costs and expenses, including reasonable attorneys' fees, in any way relating to or arising out of any action or operation of the Contractor, or its agents,

employees, or subcontractors under this Contract, including but not limited to personal injury or property damage, including but not limited to injury or damage to the person or property of the Commission, the Contracting Entity, the EDCs, or the Contractor, or their respective agents, employees, or subcontractors, and shall, at the request of the Commission, the Contracting Entity or any of the EDCs, defend any and all actions brought against the Commission, the Contracting Entity or the EDCs, and their respective agents, employees, or subcontractors based upon any such claims or demands. This Indemnity shall not apply relating to any penalty imposed by the Commission on the Contracting Entity or an EDC. The Contractor expressly waives use of the “statutory employer” defenses provided in the Pennsylvania Worker’s Compensation Act at 77 P.S. § 481(a) and (b) and 77 P.S. § 52 with regard to this indemnity.

Q. **LIMITATION OF LIABILITY.**

IN NO EVENT, WHETHER BASED ON CONTRACT, INDEMNITY, WARRANTY, TORT (INCLUDING NEGLIGENCE OR GROSS NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, SHALL ANY PARTY OR THEIR RESPECTIVE AGENTS OR EMPLOYEES OR SUBCONTRACTORS, BE LIABLE TO ANY PARTY OR THEIR RESPECTIVE AGENTS OR EMPLOYEES OR SUBCONTRACTORS, FOR SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES WHATSOEVER INCLUDING, WITHOUT LIMITATION, LOSS OF PROFITS OR REVENUE OR COST OF CAPITAL.

The Contractor’s indemnification, defense, and hold harmless obligations found in Paragraph P “Indemnity” under this Agreement shall not exceed \$8 million.

R. **Final Report Copies.**

The Contractor shall provide an electronic version of each Final Annual or Five-Year Report that is compatible with the Commission's network software to the Commission and the Contracting Entity for disbursal to the EDCs.

S. **Immunity.**

Nothing contained in this Contract shall be construed as a waiver of the immunity of the Commonwealth or the Commission against suit.

T. **Potential Conflicts of Interest.**

In order to ensure an impartial review of the EDCs’ Energy Efficiency and Conservation Programs, other than in performance of duties under this Contract, the Contractor or any of its subcontractors, or any parent or related entities to the Contractor or any of its subcontractors, or any of the Contractor’s or any of its subcontractors’ employees, may not provide evaluation or energy efficiency or conservation services to any of the Pennsylvania-based EDCs during the Contract term. In addition, the contract or will seek review and approval from the Project Officer on a case-by-case basis before contracting

with electric distribution utilities located outside of Pennsylvania that are affiliates of Pennsylvania-based EDCs or who share the same corporate parent company. Factors to be considered by the Commission include, but are not limited to, the following: 1) whether the contract oversight for the non-Pennsylvania-based EDC involves the same staff that are involved in contract oversight of the Act 129 program contracts; 2) whether the staff that are involved in the Commission contract are the same or different from the staff that would work on the out-of-state contract; and 3) whether the nature of the work on the out-of-state contract involves EM&V and EE&C program design work or other work such as market research. Requests for review from the Contractor should include information on these factors as well as other factors that may be relevant to potential conflicts of interest.

U. Jurisdiction.

It is understood and agreed that actions undertaken by the Contractor this shall be limited to matters within the jurisdiction of the Commission.

V. Employees, Background Checks, Substance Abuse.

1. Contractor shall employ for the work only persons known to it to be experienced, qualified, reliable, and trustworthy. At the request of the Commission staff, EDC staff, or Contracting Entity staff, the credentials of any of Contractor's employees assigned to perform the work shall be submitted to them in advance of such assignment. During the performance of the work, the Commission staff, EDC staff, or Contracting Entity staff may object to any Contractor's employee, who, in their opinion, does not meet these criteria. In such case, Contractor shall at its expense and risk, immediately replace and remove such employee and promptly advise the Commission's Project Officer.
2. Background checks. Contractor shall make best efforts to ensure that Contractor's employees assigned to work on this Project do not have criminal records and are not involved in criminal activity which could create a risk of fraud/embezzlement and/or a risk to the Commission's or EDCs' property and employees, and/or to any EDCs' customers or customers' property.

Contractor will obtain criminal background checks for all employees, including but not limited to employees of all subcontractors, for this Project who will visit or otherwise have physical contact with any of the customers of the EDCs or such customers' premises or property prior to such employee performing work on the Project. Criminal background checks will be checked at least every year for such employees. Contractor will maintain up to date records evidencing such criminal background checks.

Upon actual knowledge of a criminal record or involvement in a potentially criminal activity, including but not limited to threats, harassment, or other abuse, Contractor shall immediately remove any such employee or employees from the work and

immediately contact the Project Officer and the Contracting Entity’s Representative to inform them of the circumstances. Commission staff, EDC staff, or Contracting Entity staff, at any time, may request Contractor to verify that an employee or employees do not possess a criminal record.

- a. Contractor shall provide certification for each of the Contractor’s employees who are authorized as part of the work to have electronic or unescorted physical access to critical cyber assets (as the same are identified from time to time), that such employee (i) has submitted to a Background Check within the past seven years whereby no evidence of a criminal record or criminal activity was discovered; (ii) is subject to a seven-year cycle re-check of the Background Check; and (iii) has received the Contractor-sponsored security awareness training or will receive such training prior to accessing critical cyber assets. These requirements are subject to audit by Commission staff, EDC staff, or Contracting Entity staff.
3. Substance Abuse. Contractor agrees to comply with all applicable state and federal laws regarding a drug-free workplace. Contractor shall make a good faith effort to ensure that all Contractor’s employees undertaking work will not be under the influence, purchase, transfer, use or possess illegal drugs or alcohol or abuse prescription drugs in any way. Upon actual knowledge of such activity or any such potential activity, Contractor shall immediately remove any such employee or employees from the work and immediately contact the Project Officer and the Contracting Entity’s Representative to inform them of the circumstances.

IN WITNESS THEREOF, intending to be legally bound, the Contractor, the Contracting Entity, and the Commission, have caused this 2021 Act 129 Statewide Evaluator Contract to be approved and executed under their signatures with a duplicate copy being provided to each of the parties.

Contractor Date

Donna M. J. Clark, Esq. Vice President Date
EEC Pennsylvania Evaluations
Contracting Entity

Robert C. Gramola Date
Director of Administration
Pennsylvania Public Utility Commission

Renardo L. Hicks, Esq. Date
Chief Counsel
Pennsylvania Public Utility Commission

2021 Act 129 Statewide Evaluator Contract
Nondisclosure Agreement

Duquesne Light Company, Metropolitan Edison Company, PECO Energy Company, Pennsylvania Electric Company, Pennsylvania Power Company, PPL Electric Utilities Corporation, and West Penn Power Company and their affiliates (“EDCs”), EEC Pennsylvania Evaluations (“Contracting Entity”), the Pennsylvania Public Utility Commission (“Commission”), NMR Group, Inc. (“Contractor”), and Contractor's authorized representatives, intending to be legally bound, hereby agree as follows:

1. As part of the Act 129 Statewide Evaluator Contract, it may be necessary for the Contractor to review data, including EDC customer data, books, records, and documents of the EDCs that are considered by the EDCs to be confidential proprietary business information (proprietary information).
2. The proprietary information may include certain information of an affiliate of the EDCs or other party providing information, which is contained within such books, records, and documents.
3. In order to safeguard more effectively the proprietary information, the Contractor will designate certain authorized representative(s) to receive and review the proprietary information submitted by the EDCs or other entity. Said authorized representatives will agree to be bound by this Nondisclosure Agreement and will sign it prior to receiving any proprietary information and will furnish, upon request, to the EDCs or other entity a signed copy of the Nondisclosure Agreement executed by such authorized representative(s). Proprietary information will not be accessible by anyone who has not signed the Nondisclosure Agreement.
4. With respect to proprietary information provided under this Agreement, the Contractor and its authorized representatives shall:
 - (a) Hold the proprietary information in confidence;
 - (b) Restrict disclosure of the proprietary information only to persons authorized under this Agreement (as identified in Paragraph 3) who have a need to know;
 - (c) Use the proprietary information solely in connection with the Contractor's work on Act 129 Statewide Evaluator Contract;
 - (d) Except as provided in Paragraph 5 below, not disclose the proprietary information publicly or privately to any third party in any manner, unless such third party has signed this Nondisclosure Agreement; and
 - (e) Advise the Contractor's representatives of their obligation with respect to the proprietary information.

5. The Contractor may make proprietary information available to the Commission's Staff under this Agreement; provided, however, that in the event of disclosure, the Commission's Staff shall also be bound by the terms of this Agreement. Nothing in this Agreement shall be construed as preventing access by the Commission (outside the scope of the Act 129 Statewide Evaluation) to the data, books, records, and documents of the EDCs as permitted by the statutory and common law of the Commonwealth of Pennsylvania.
6. All proprietary information and copies made thereof provided to the Contractor and Commission's Staff must be returned to the EDCs no later than three months beyond the finalization of the Contractor's Annual or Five-Year Reports.
7. After providing the EDCs an opportunity to comment, either the Contractor or the Commission's Staff may assert at any time that any document claimed to be proprietary is in fact non-proprietary. Any disagreement as to the proprietary or non-proprietary nature of a particular document or information shall be resolved by action of the Commission.
8. Proprietary information that is provided to the Contractor and/or Commission Staff will be protected from disclosure as proprietary information under 66 Pa. C.S. §335(d) until such time as the Commission (or court of competent jurisdiction, if an appeal of a Commission determination is taken) rules that the documents are non-proprietary and, therefore, subject to public disclosure. In determining which documents are subject to public disclosure, the Commission will follow the *Right-to-Know Law*, 65 P.S. § 67.101 et seq., including any future amendments thereto.
9. If the EDCs wish to seek additional measures of protection with respect to the specific proprietary data of a particularly sensitive nature or to claim that specific documents are subject to a privilege that precludes disclosure to any party, then it is incumbent upon the EDCs to demonstrate that need to the Project Officer. In the event the EDCs and the Project Officer are unable to agree, the EDCs may seek a determination from the Commission.
10. The Contractor recognizes that the provisions of this Agreement are vitally important to the welfare of the EDCs and other entities providing information pursuant to the Act 129 Statewide Evaluation and that money damages may not be an adequate remedy for any violation by the Contractor thereof. Accordingly, in the event of any breach or violation by the Contractor of the provisions thereof, the EDCs or other entity may institute and maintain a proceeding to compel specific performance by the Contractor thereof or to issue an injunction restraining such breach or violation hereunder by the Contractor.
11. Nothing in this Agreement shall otherwise affect, abridge, increase, or decrease the statutory authority of the Commission to investigate or inspect the facilities and data, books, records, and documents of the EDCs, or to examine records of the cost to the EDCs' affiliates for providing services or furnishing property to the EDCs (where applicable).
12. Nothing contained in this Agreement shall affect, abridge, increase, or decrease the ability of the EDCs to appeal to the Commonwealth Court to protect its rights.

IN WITNESS THEREOF, intending to be legally bound, the Contractor, EEC Pennsylvania Evaluations, the EDCs, and the Commission, have caused this Nondisclosure Agreement to be approved and executed under their signatures, as Exhibit 1 to the 2021 Act 129 Statewide Evaluator Contract, with a duplicate copy being provided to each of the parties.

Contractor Date

EEC Pennsylvania Evaluations Date

Duquesne Light Company Date

Metropolitan Edison Company Date

PECO Energy Company Date

Pennsylvania Electric Company Date

Pennsylvania Power Company Date

PPL Electric Utilities Corporation Date

West Penn Power Company Date

Robert C. Gramola Date
Director of Administration
Pennsylvania Public Utility Commission

Renardo L. Hicks Date
Chief Counsel
Pennsylvania Public Utility Commission

NONDISCRIMINATION/SEXUAL HARASSMENT PROVISIONS

During the term of this Contract, CONTRACTOR agrees as follows:

1. In the hiring of any employees for the manufacture of supplies, performance of work, or any other activity required under this Contract or any subcontract, CONTRACTOR, subcontractor, or any person acting on behalf of CONTRACTOR or subcontractor, shall not, by reason of gender, race, creed, or color, discriminate against any citizen of this PUC who is qualified and available to perform the work to which the employment relates.
2. Neither CONTRACTOR nor any subcontractor nor any person on their behalf shall in any manner discriminate against or intimidate any employee involved in the manufacture of supplies, the performance of work, or any other activity required under this Contract on account of gender, race, creed, or color.
3. CONTRACTOR and each subcontractor shall establish and maintain a written sexual harassment policy and shall inform their employees of the policy. The policy must contain a notice that sexual harassment will not be tolerated and employees who practice it will be disciplined.
4. CONTRACTOR and each subcontractor shall not discriminate by reason of gender, race, creed, or color against any subcontractor or supplier who is qualified to perform the work to which this Contract relates.
5. CONTRACTOR and each subcontractor shall, within the time periods requested by the PUC, furnish all necessary employment documents and records to and permit access to its books, records, and accounts by the PUC and the Department of General Services, for purposes of investigation to ascertain compliance with the provisions of this Nondiscrimination/Sexual Harassment Clause. If CONTRACTOR or subcontractor does not possess documents or records reflecting the necessary information requested, it shall furnish such information on reporting forms supplied by the PUC or the Department of General Services.
6. CONTRACTOR shall include the provisions of this Nondiscrimination/Sexual Harassment Clause in every subcontract so that those provisions applicable to subcontractors will be binding upon each subcontractor.
7. The PUC may cancel or terminate this Contract, and all money due or to become due under this Contract may be forfeited for a violation of the terms and conditions of this Nondiscrimination/Sexual Harassment Clause. In addition, the PUC may proceed with debarment or suspension and may place CONTRACTOR in the Contractor Responsibility File.

RESPONSIBILITY PROVISIONS

1. CONTRACTOR certifies, for itself and all its subcontractors, that as of the date of its execution of this Contract, that neither CONTRACTOR, nor any subcontractors, nor any suppliers are under suspension or debarment by the PUC or any governmental entity, instrumentality, or authority and, if CONTRACTOR cannot so certify, then it agrees to submit, along with its Contract, a written explanation of why such certification cannot be made.

2. CONTRACTOR also certifies that as of the date of its execution of this Contract, it has no tax liabilities or other PUC obligations.

3. CONTRACTOR's obligations pursuant to these provisions are ongoing from and after the effective date of this Contract through the termination date thereof. Accordingly, CONTRACTOR shall have an obligation to inform the PUC if, at any time during the term of this Contract, is becomes delinquent in the payment of taxes, or other PUC obligations, or if it or any of its subcontractors are suspended or debarred by the PUC, the federal government, or any other state or governmental entity. Such notification shall be made within 15 days of the date of suspension or debarment.

4. The failure of CONTRACTOR to notify the PUC of its suspension or debarment by the PUC, any other state, or the federal government shall constitute an event of default of this Contract with the PUC.

5. CONTRACTOR agrees to reimburse the PUC for the reasonable costs of investigation incurred by the Pennsylvania Office of Inspector General for investigations of CONTRACTOR's compliance with the terms of this or any other Contract between CONTRACTOR and the PUC, which results in the suspension or debarment of CONTRACTOR. Such costs shall include, but shall not be limited to, salaries of investigators, including overtime, travel, and lodging expenses; and expert witness and documentary fees. CONTRACTOR shall not be responsible for investigative costs for investigations that do not result in CONTRACTOR's suspension or debarment.

6. CONTRACTOR may obtain a current list of suspended and debarred PUC contractors either by searching the Internet at www.dgs.state.pa.us, or by contacting the:

Department of General Services
Office of Chief Counsel
603 North Office Building
Harrisburg, Pennsylvania 17125
Phone: (717) 783-6472
Fax: (717) 787-9138

THE AMERICANS WITH DISABILITIES ACT PROVISIONS

1. Pursuant to federal regulations promulgated under the authority of *The Americans With Disabilities Act*, 28 C.F.R. § 35.101, *et seq.*, CONTRACTOR understands and agrees that it shall not cause any individual with a disability to be excluded from participation in this Contract or from activities provided for under this Contract on the basis of the disability. As a condition of accepting this Contract, CONTRACTOR agrees to comply with the *General Prohibitions Against Discrimination*, 28 C.F.R. § 35.130, and all other regulations promulgated under Title II of *The Americans With Disabilities Act* which are applicable to all benefits, services, programs, and activities provided by the PUC of Pennsylvania through contracts with outside contractors.

2. CONTRACTOR shall be responsible for and agrees to indemnify and hold harmless the PUC of Pennsylvania from all losses, damages, expenses, claims, demands, suits, and actions brought by any party against the PUC of Pennsylvania as a result of CONTRACTOR's failure to comply with the provisions of Paragraph 1 of this Exhibit.

CONTRACTOR INTEGRITY PROVISIONS

1. For purposes of these Integrity Provisions, the words “confidential information,” “consent,” “financial interest,” “gratuity,” and “Contractor” shall have the following definitions.

a. “Confidential information” means information that (1) is not already in the public domain; (2) is not available to the public upon request; (3) is not or does not become generally known to Contractor from a third party without an obligation to maintain its confidentiality; (4) has not become generally known to the public through an act or omission of Contractor; or (5) has not been independently developed by Contractor without the use of confidential information of the PUC.

b. “Consent” means written permission signed by a duly authorized officer or employee of the PUC, provided that where the material facts have been disclosed, in writing, by prequalification, bid, proposal, or contractual terms, the PUC shall be deemed to have consented by virtue of execution of this Contract.

c. “Financial Interest” means:

- (1) ownership of more than a 5% interest in any business; or
- (2) holding a position as an officer, director, trustee, partner, employee, or the like, or holding any position of management.

d. “Gratuity” means any payment of more than nominal monetary value in the form of cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind.

e. “Immediate family” means a spouse and any unemancipated child.

f. “Contractor” means the individual or entity that has entered into this Contract with the PUC, including directors, officers, partners, managers, key employees, and owners of more than a 5% interest.

g. “Political contribution” means any payment, gift, subscription, assessment, contract, payment for services, dues, loan, forbearance, advance or deposit of money or any valuable thing, to a candidate for public office or to a political committee, including but not limited to a political action committee, made for the purpose of influencing any election in the PUC of Pennsylvania or for paying debts incurred by or for a candidate or committee before or after any election.

2. Contractor shall maintain the highest standards of honesty and integrity in the performance of this Contract and shall take no action in violation of state or federal laws, regulations, or other requirements that govern contracting with the PUC.

3. Contractor shall be subject to the obligations of confidentiality with which lawyers must comply under the applicable Rules of Professional Conduct.

4. Contractor shall establish and implement a written business integrity policy, which includes, at a minimum, the requirements of these provisions as they relate to Contractor's employee activity with the PUC and PUC employees, and which is distributed and made known to all employees of Contractor.

5. Contractor, its affiliates, agents and employees shall not influence, or attempt to influence, any PUC employee to breach the standards of ethical conduct for PUC employees set forth in the *Public Official and Employees Ethics Act, 65 Pa.C.S. §§1101 et seq.*; the *State Adverse Interest Act, 71 P.S. §776.1 et seq.*; and the *Governor's Code of Conduct, Executive Order 1980-18, 4 Pa. Code §7.151 et seq.*, or to breach any other state or federal law or regulation.

6. Contractor, its affiliates, agents and employees shall not, in connection with this or any other Contract with the PUC, directly or indirectly, offer, confer, or agree to confer any pecuniary benefit on anyone as consideration for the decision, opinion, recommendation, vote, other exercise of discretion, or violation of a known legal duty by any officer or employee of the PUC.

7. Contractor, its affiliates, agents and employees shall not, in connection with this or any other Contract with the PUC, directly or indirectly, offer, give, or agree or promise to give to anyone any gratuity for the benefit of or at the direction or request of any officer or employee of the PUC.

8. Contractor, its affiliates, agents and employees shall not offer, give, or agree or promise to give any gratuity to a PUC official or employee or to any other person, the acceptance of which would violate the *Governor's Code of Conduct, Executive Order 1980-18, 4 Pa. Code §7.151 et seq.* or any statute, regulation, statement of policy, management directive or any other published standard of the PUC.

9. Except with the consent of the PUC, neither Contractor nor anyone in privity with Contractor shall accept or agree to accept from, or give or agree to give to, any person, any gratuity from any person in connection with the performance of work under this Contract except as provided therein.

10. Contractor shall not have a financial interest in any other contractor, subcontractor, or supplier providing services, labor, or material on this project, unless the financial interest is disclosed to the PUC in writing and the Office of PUC consents to Contractor's financial interest no later than Contractor's submission of the contract signed by Contractor, and prior to PUC execution of the contract.

11. Contractor, its affiliates, agents and employees shall not disclose to others any information, documents, reports, data, or records provided to, or prepared by, Contractor under this Contract without the prior written approval of the PUC, except as required by the

Pennsylvania Right-to-Know Law, 65 P.S. §§ 67.101-3104, or other applicable law or as otherwise provided in this Contract. Any information, documents, reports, data, or records secured by Contractor from the PUC or a third party in connection with the performance of this Contract shall be kept confidential unless disclosure of such information is:

- a. Approved in writing by the PUC prior to its disclosure; or
- b. Directed by a court or other tribunal of competent jurisdiction unless the contract requires prior PUC approval; or
- c. Required for compliance with federal or state securities laws or the requirements of national securities exchanges; or
- d. Necessary for purposes of Contractor's internal assessment and review; or
- e. Deemed necessary by Contractor in any action to enforce the provisions of this Contract or to defend or prosecute claims by or against parties other than the PUC; or
- f. Permitted by the valid authorization of a third party to whom the information, documents, reports, data, or records pertain; or
- g. Otherwise required by law.

12. Contractor certifies that neither it nor any of its officers, directors, associates, partners, limited partners or individual owners has not been officially notified of, charged with, or convicted of any of the following and agrees to immediately notify the PUC in writing if and when it or any officer, director, associate, partner, limited partner or individual owner has been officially notified of, charged with, convicted of, or officially notified of a governmental determination of any of the following:

- a. Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property.
- b. Commission of fraud or a criminal offense or other improper conduct or knowledge of, approval of or acquiescence in such activities by Contractor or any affiliate, officer, director, associate, partner, limited partner, individual owner, or employee or other individual or entity associated with:
 - (1) obtaining;
 - (2) attempting to obtain; or
 - (3) performing a public contract or subcontract.

Contractor's acceptance of the benefits derived from the conduct shall be deemed evidence of such knowledge, approval or acquiescence.

- c. Violation of federal or state antitrust statutes.
- d. Violation of any federal or state law regulating campaign contributions.
- e. Violation of any federal or state environmental law.
- f. Violation of any federal or state law regulating hours of labor, minimum wage standards or prevailing wage standards; discrimination in wages; or child labor violations.
- g. Violation of the *Act of June 2, 1915 (P.L.736, No. 338)*, known as the *Workers' Compensation Act, 77 P.S. 1 et seq.*
- h. Violation of any federal or state law prohibiting discrimination in employment.
- i. Debarment by any agency or PUC of the federal government or by any other state.
- j. Any other crime involving moral turpitude or business honesty or integrity.

Contractor acknowledges that the PUC may, in its sole discretion, terminate the contract for cause upon such notification or when the PUC otherwise learns that Contractor has been officially notified, charged, or convicted.

13. Contractor must, (as required by *Section 1641* of the *Pennsylvania Election Code*) file a report of political contributions with the Secretary of the PUC on or before February 15 of the next calendar year. The report must include an itemized list of all political contributions known to Contractor by virtue of the knowledge possessed by every officer, director, associate, partner, limited partner, or individual owner that has been made by:

- a. Any officer, director, associate, partner, limited partner, individual owner or members of the immediate family when the contributions exceed an aggregate of one thousand dollars (\$1,000) by any individual during the preceding year; or
- b. Any employee or members of his immediate family whose political contribution exceeded one thousand dollars (\$1,000) during the preceding year.

To obtain a copy of the reporting form, Contractor shall contact the Bureau of Commissions, Elections and Legislation, Division of Campaign Finance and Lobbying Disclosure, Room 210, North Office Building, Harrisburg, PA 17120.

14. Contractor shall comply with requirements of the *Lobbying Disclosure Act, 65 Pa.C.S. § 13A01 et seq.*, and the regulations promulgated pursuant to that law. Actions by outside lobbyists on behalf of Contractor are not exempt and must be reported.

15. When Contractor has reason to believe that any breach of ethical standards as set forth in law, the Governor's Code of Conduct, or in these provisions has occurred or may occur, including but not limited to contact by a PUC officer or employee which, if acted upon, would violate such ethical standards, Contractor shall immediately notify the PUC in writing.

16. Contractor, by execution of this Contract and by the submission of any bills or invoices for payment pursuant thereto, certifies and represents that it has not violated any of these Integrity Provisions.

17. Contractor shall cooperate with the Office of the Inspector General in its investigation of any alleged PUC employee breach of ethical standards and any alleged Contractor non-compliance with these provisions. Contractor agrees to make identified employees of Contractor available for interviews at reasonable times and places. Contractor, upon the inquiry or request of the Inspector General of the PUC or any of that official's agents or representatives, shall provide, or if appropriate, make promptly available for inspection or copying, any information of any type or form deemed relevant by the Inspector General to Contractor's integrity and compliance with these provisions. Such information may include, but shall not be limited to, Contractor's business or financial records, documents, or files of any type or form that refer to or concern this Contract. Such information shall be retained by Contractor for a period of three years beyond the termination of this Contract unless otherwise provided by law.

18. For violation of any of the above provisions, the PUC may terminate this and any other Contract with Contractor, claim liquidated damages in an amount equal to the value of anything received in breach of these provisions, claim damages for all additional costs and expenses incurred in obtaining another Contractor to complete performance hereunder, and debar and suspend Contractor from doing business with the PUC. These rights and remedies are cumulative, and the use or nonuse of any one shall not preclude the use of all or any other. These rights and remedies are in addition to those the PUC may have under law, statute, regulation or otherwise.

**APPENDIX A
PROPOSAL COVER SHEET
COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
PUC RFP 2020-2
2021 Act 129 Statewide Evaluator**

The proposal of the Offeror identified below for the above-referenced RFP is submitted comprised of separate files for Technical, Cost and SDB/SB:

Offeror Name	
Offeror Mailing Address	
Offeror Website	
Offeror Contact Person	
Contact Person's Phone	
Contact Person's E-Mail	
Offeror Federal ID Number	
Offeror SAP/SRM Vendor #	

Submittals Enclosed:	
Y	Technical Submittal <input type="checkbox"/> Domestic Workforce Utilization Certification
Y	Small Diverse Business and Small Business Participation Submittal <input type="checkbox"/> Small Diverse Business and Small Business Participation Submittal Form <input type="checkbox"/> Small Diverse Business and Small Business Letter(s) of Intent
Y	Cost Submittal

<i>Signature</i>
Signature of an official authorized to bind the Offeror to the provisions contained in the Offeror's proposal:
Printed Name:
Title:

FAILURE TO COMPLETE, SIGN AND RETURN THIS FORM WITH THE OFFEROR'S PROPOSAL MAY RESULT IN THE REJECTION OF THE OFFEROR'S PROPOSAL

APPENDIX B
DOMESTIC WORKFORCE UTILIZATION CERTIFICATION

To the extent permitted by the laws and treaties of the United States, each proposal will be scored for its commitment to use the domestic workforce in the fulfillment of the contract. Maximum consideration will be given to those offerors who will perform the contracted direct labor exclusively within the geographical boundaries of the United States or within the geographical boundaries of a country that is a party to the World Trade Organization Government Procurement Agreement. Those who propose to perform a portion of the direct labor outside of the United States and not within the geographical boundaries of a party to the World Trade Organization Government Procurement Agreement will receive a correspondingly smaller score for this criterion. In order to be eligible for any consideration for this criterion, offerors must complete and sign the following certification. This certification will be included as a contractual obligation when the contract is executed. Failure to complete and sign this certification will result in no consideration being given to the offeror for this criterion.

I, _____ **[title]** of _____ **[name of Contractor]** a
_____ **[place of incorporation]** corporation or other legal entity, (“Contractor”) located at
_____ **[address]** do hereby certify and represent to
the Commonwealth of Pennsylvania (“Commonwealth”) (Check **one** of the boxes below):

All of the direct labor performed within the scope of services under the contract will be performed exclusively within the geographical boundaries of the United States or one of the following countries that is a party to the World Trade Organization Government Procurement Agreement: Aruba, Austria, Belgium, Bulgaria, Canada, Chinese Taipei, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea, Latvia, Liechtenstein, Lithuania, Luxemburg, Malta, the Netherlands, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, and the United Kingdom

OR

_____ **percent (____%) [Contractor must specify the percentage]** of the direct labor performed within the scope of services under the contract will be performed within the geographical boundaries of the United States or within the geographical boundaries of one of the countries listed above that is a party to the World Trade Organization Government Procurement Agreement. Please identify the direct labor performed under the contract that will be performed outside the United States and not within the geographical boundaries of a party to the World Trade Organization Government Procurement Agreement and identify the country where the direct labor will be performed:

[Use additional sheets if necessary]

The Department of General Services **[or other purchasing agency]** shall treat any misstatement as fraudulent concealment of the true facts punishable under Section 4904 of the *Pennsylvania Crimes Code*, Title 18, of Pa. Consolidated Statutes.

Attest or Witness:

Corporate or Legal Entity's Name

Signature/Date

Signature/Date

Printed Name/Title

Printed Name/Title