

**PECO Energy Company**  
**Default Service Program**  
**Request for Proposals**

# TABLE OF CONTENTS

ARTICLE I.	INTRODUCTION.....	3
I.1.	Overview.....	3
I.2.	Products and Bids .....	6
I.3.	Process.....	13
I.4.	Supplier’s Obligations .....	15
ARTICLE II.	Information and Schedule .....	18
II.1.	RFP Website .....	18
II.2.	RFP Schedule .....	19
ARTICLE III.	General Requirements for Proposals .....	21
ARTICLE IV.	Part 1 Proposal Requirements .....	26
IV.1.	Contact Information and Representations.....	26
IV.2.	Financial Requirements and Agency Agreements .....	28
IV.3.	Credit Instruments and Uniform SMA .....	34
IV.4.	Representations .....	37
IV.5.	Foreign RFP Bidders and Foreign Entities .....	40
ARTICLE V.	Part 2 Proposal Requirements .....	46
V.1.	Contact Information and Representations.....	46
V.2.	Pre-Bid Letter of Credit .....	48
V.3.	RFP Bidders Relying on the Financial Standing of an RFP Guarantor.....	50
V.4.	RFP Bidders Relying on the Financial Standing of an RFP Principal.....	52
V.5.	Foreign RFP Bidders and Foreign Entities .....	54
ARTICLE VI.	Bid Submission .....	59
ARTICLE VII.	Process .....	61
VII.1.	Part 1 and Part 2 Proposals: Submission and Processing.....	61
VII.2.	Bids: Submission, Processing, and Evaluation .....	71
VII.3.	Post-Bid Process.....	74
VII.4.	Personnel and Confidentiality.....	78
ARTICLE VIII.	Reserved Rights .....	79

## ARTICLE I. INTRODUCTION

### I.1. Overview

- I.1.1. Capitalized terms in this document, which are not defined explicitly herein, are defined in the PECO Energy Company - Pennsylvania Default Service Supplier Master Agreement (“Uniform SMA” or “SMA”). The Uniform SMA is attached as Appendix 1 to this document.
- I.1.2. As part of its fourth Default Service Plan (“DSP IV”), PECO Energy Company (“Company” or “PECO”) proposed a competitive bidding process to obtain full requirements supply for the Company to meet a portion of its obligations as Default Service Provider pursuant to Chapter 28 of the Pennsylvania Public Utility Code, 66 Pa. C. S. §§ 2801-2812. This competitive bidding process is consistent with Chapter 28, with P.L. 1592 No. 129 (“Act 129”), with the Pennsylvania Public Utility Commission’s (“Commission” or “PaPUC”) Default Service regulations in its Final Rulemaking Order in Docket No. L-2009-2095604, and the Commission’s Final Policy Statement on Default Service in Docket No. M-2009-2140580. The Commission approved this competitive bidding process (Docket No. P-2016-2534980) in its Order dated December 8, 2016.
- I.1.3. PECO currently provides electric generation service to all customers within its service territory who do not select an electric generation supplier (“EGS”). Such customers are “Default Service customers” or “DS Customers”. The competitive bidding process procures supply for the period beginning June 1, 2017 when PECO’s third Default Service Plan (“DSP III”) expires.
- I.1.4. The competitive bidding process will be conducted through a series of Requests for Proposals (“RFPs”) issued twice yearly. The RFP consists of a total of thirteen (13) documents. This main document is called the “RFP Rules” and it describes how the RFP will be conducted. The following documents are appended to, and shall be considered an integral part of, the RFP Rules:

Appendix 1: Uniform SMA  
Appendix 2: Alternate Guaranty Process  
Appendix 3: Illustrative Standard Part 1 Form  
Appendix 4: Illustrative Short Part 1 Form  
Appendix 5: Chief Financial Officer Attestation  
Appendix 6: Officers’ Certificate (for RFP Bidders under an Agency Agreement)  
Appendix 7: Illustrative Standard Part 2 Form  
Appendix 8: Illustrative Short Part 2 Form  
Appendix 9: Standard Pre-Bid Letter of Credit  
Appendix 10: Sample Bid Form

I.1.5. DSP IV plans for the procurement of full requirements supply for three (3) “Classes” of Default Service customers: the Residential (“RES”) Class, the Small Commercial (“SC”) Class, and the Consolidated Large Commercial and Industrial (“CCI”) Class. Each such Class (or “DS Customer Group”) is a group of specific rate schedules as provided in the following table:

**Table I-1. Customer Classes.**

<b>Class</b>	<b>Customers Included</b>	<b>Rate Schedule</b>	<b>Description</b>
Residential	All residential customers	R	Residence Service
		RH	Residential Heating Service
Small Commercial	Non-residential customers with Peak Load Contribution up to and including 100kW and lighting customers	GS	General Service
		HT	High-Tension Power
		PD	Primary – Distribution Power
		AL	Alley Lighting in City of Philadelphia
		TLCL	Traffic Lighting Constant Load Service
		POL	Private Outdoor Lighting
		SL-E	Street Lighting Customer-Owned Facilities
SL-S	Street Lighting-Suburban Counties		
Consolidated Large Commercial and Industrial	Non-residential customers with Peak Load Contribution greater than 100kW	GS	General Service
		HT	High-Tension Power
		PD	Primary –Distribution Power
		EP	Electric Propulsion

I.1.6. For the RES and SC Classes, the Company will solicit bids for the procurement of full requirements service on a fixed-price basis. For the CCI Class, the Company will solicit bids for the procurement of full requirements service with energy priced to the PJM day-ahead spot market. The Default Service supply (“Default Supply” or “DS Supply”) for a Class is the full requirements electricity supply based on the load of the retail customers in that Class measured and recorded by the Company and settled by PJM. The load of the Default Service customers in a Class is the “Default Load” or “DS Load” of that Class. A supplier selected through the competitive bidding process under DSP IV to provide Default Supply for a particular Class and approved by the Commission becomes a “Default Supplier” or “DS Supplier” for that Class.

- I.1.7. A Default Service customer may choose to begin receiving service from an EGS on the customer's meter reading date in accordance with the Company's standard switching requirements as described in the Company's Electric Generation Supplier Coordination Tariff including, without limitation, prior advance notice to the Company. A customer served by an EGS may return to Default Service on the customer's meter reading date in accordance with the Company's standard switching requirements as described in the Company's Electric Generation Supplier Coordination Tariff including, without limitation, prior advance notice to the Company.
- I.1.8. There are eight (8) "solicitations" or "DS Solicitations" under DSP IV that will select electricity suppliers to provide Default Supply for the period June 1, 2017 through May 31, 2021 and for a portion of the Company's requirements for the RES Class and SC Class for the period beyond June 1, 2021. Each solicitation will be identified by the month and year in which the Bid Date occurs. Solicitations will be held in March and September of each year, starting with a solicitation in March 2017 and ending with a solicitation in September 2020. The schedule for the current solicitation is provided in Paragraph II.2.1. The Independent Evaluator and the Company may advise the Commission to postpone or modify the schedule of a solicitation when market conditions are impacted by extraordinary events, such as the advent of war, terrorism, or an act of God.
- I.1.9. For each solicitation, these RFP Rules will be updated to include the dates for that solicitation and to refer to the particular products to be procured in that solicitation. The RFP Rules may be further updated to reflect additional decisions by the Commission, relevant changes in law, or non-material modifications to the processing of Proposals expected to improve potential participation by suppliers. Additionally, the RFP Rules may change as a result of issues raised in the stakeholder collaborative PECO will hold in January 2018 and, if necessary, in the follow-up collaborative to be held in February 2018. Further, the Independent Evaluator and the Company may amend the RFP Rules if necessary to correct typographical errors, cure inconsistencies in the provisions of this RFP, or clarify the intent of the provisions of this RFP.
- I.1.10. The rates of Default Service customers for a Class are determined on the basis of the prices determined through this RFP for that Class, except for approximately 1% of the Default Load of the RES Class, for which PECO assumes responsibility. PECO acquires the necessary supply through

PJM-administered markets and obtaining sufficient Alternative Energy Credits (“AECs”) at market prices to satisfy any near-term obligations under the AEPS Act. As provided in the Commission’s directive dated October 12, 2010 (Docket No. M-2009-2082042), PECO provides a Default Service rate calculation model that translates the prices determined through this RFP into Default Service rates. This calculation model is posted to the PECO website:

<https://www.peco.com/MyAccount/MyService/Pages/ElectricPricetoCompare.aspx>

## **I.2. Products and Bids**

- I.2.1. Default Load for each Class is divided into tranches. A tranche for a Class represents a fixed percentage of the Default Load for that Class. A Default Supplier serving a tranche in a particular Class provides full requirements service for the percentage of that Class’ Default Load represented by that one (1) tranche for a specified period.
- I.2.2. The total number of tranches of Default Load is based on that Class’ annual Peak Load Contribution (“PLC”) on the PECO system in accordance with PJM. The MW-Measure is calculated as the annual PLC for the Default Load of the Class divided by the total number of tranches. This figure is calculated for reference purposes only.
- I.2.3. Each Class has “Load Caps”, which are limits on the number of tranches of Default Supply that an RFP Bidder can bid and serve for that Class. The Load Caps ensure that there will be a diversified pool of Default Suppliers for each Class. The Load Caps for a Class are set so that the Default Service customers of that Class have no more than a 50% exposure to any one Default Supplier at any given time. If two or more Default Suppliers are affiliated, the Load Caps will apply jointly to such group of Default Suppliers.
- I.2.4. The total number of tranches, the percentage size of each tranche, the MW-Measure of each tranche, and the Load Caps are shown in the following table.

**Table I-2. Number of Tranches and Size of a Tranche for Default Load.**

<b>Class</b>	<b>Total Tranches</b>	<b>Load Cap</b>	<b>% Size of a Tranche</b>	<b>Total Peak (MW)</b>	<b>Default Peak (MW)</b>	<b>MW-Measure of a Tranche</b>
RES	62	31	1.60%	3,816.25	2,445.10	39.04
SC	24	12	4.17%	1,079.75	411.86	17.16
CCI	8	4	12.50%	3,231.64	160.66	20.08

- I.2.5. The total number of tranches and the tranche size for the SC and CCI Classes are subject to change. The Independent Evaluator and PECO may revise the total number of tranches for a Class if doing so is expected to increase supplier interest. The Independent Evaluator informs Commission Staff of such a revision and announces the revision to suppliers in advance of suppliers presenting their qualifications.
- I.2.6. The actual Default Load for the RES, SC, or CCI Class will depend upon many factors including, but not limited to, customer migration to EGSs and weather conditions. The maximum peak load of a Class may be higher or lower than the PLC utilized to determine the MW-Measure of tranches for that Class. Each participant is responsible for evaluating the uncertainties associated with Default Service Load for a particular Class and supply period.
- I.2.7. A product for purposes of this RFP is defined by three characteristics: a) the Class to which it contributes Default Supply; b) the length of the supply period; and c) the date at which the supply period begins. For example, the RES-12-Jun20 product represents Default Supply for the RES Class for the supply period from June 1, 2020 through May 31, 2021. A product name may be abbreviated when the context is clear; for example, RES-12 refers to all products for the Residential Class that are twelve (12) months in duration, regardless of the start date of the supply period.
- I.2.8. A Proposal is a response to this RFP for a solicitation pursuant to these RFP Rules. An entity that submits any part of a response to this RFP for a solicitation is an "RFP Bidder". A Bid for a tranche for any product is a price in dollars per MWh rounded to the nearest cent. An RFP Bidder may submit different Bids for different tranches of a given product.
- I.2.9. The table below provides the products that will be procured for each solicitation under DSP IV.

**Table I-3. Schedule of Procurement for Products.**

Product	Solicitation							
	March 2017	September 2017	March 2018	September 2018	March 2019	September 2019	March 2020	September 2020
RES-12-Jun17	12	0	0	0	0	0	0	0
RES-24-Jun17	11	0	0	0	0	0	0	0
RES-12-Dec17	0	12	0	0	0	0	0	0
RES-24-Dec17	0	9	0	0	0	0	0	0
RES-12-Jun18	0	0	12	0	0	0	0	0
RES-24-Jun18	0	0	9	0	0	0	0	0
RES-12-Dec18	0	0	0	12	0	0	0	0
RES-24-Dec18	0	0	0	9	0	0	0	0
RES-12-Jun19	0	0	0	0	12	0	0	0
RES-24-Jun19	0	0	0	0	11	0	0	0
RES-12-Dec19	0	0	0	0	0	12	0	0
RES-24-Dec19	0	0	0	0	0	9	0	0
RES-12-Jun20	0	0	0	0	0	0	12	0
RES-24-Jun20	0	0	0	0	0	0	9	0
RES-12-Dec20	0	0	0	0	0	0	0	12
RES-24-Dec20	0	0	0	0	0	0	0	9
SC-12-Jun17	9	0	0	0	0	0	0	0
SC-24-Jun17	3	0	0	0	0	0	0	0
SC-12-Dec17	0	9	0	0	0	0	0	0
SC-24-Dec17	0	3	0	0	0	0	0	0
SC-12-Jun18	0	0	6	0	0	0	0	0
SC-24-Jun18	0	0	3	0	0	0	0	0
SC-12-Dec18	0	0	0	6	0	0	0	0
SC-24-Dec18	0	0	0	3	0	0	0	0
SC-12-Jun19	0	0	0	0	6	0	0	0



Product	Solicitation							
	March 2017	September 2017	March 2018	September 2018	March 2019	September 2019	March 2020	September 2020
SC-24-Jun19	0	0	0	0	3	0	0	0
SC-12-Dec19	0	0	0	0	0	6	0	0
SC-24-Dec19	0	0	0	0	0	3	0	0
SC-12-Jun20	0	0	0	0	0	0	6	0
SC-24-Jun20	0	0	0	0	0	0	3	0
SC-12-Dec20	0	0	0	0	0	0	0	6
SC-24-Dec20	0	0	0	0	0	0	0	3
CCI-12-Jun17	8	0	0	0	0	0	0	0
CCI-12-Jun18	0	0	8	0	0	0	0	0
CCI-12-Jun19	0	0	0	0	8	0	0	0
CCI-12-Jun20	0	0	0	0	0	0	8	0

I.2.10. The Load Caps apply to all products that contribute to Default Supply for a Class at a given point in time. The table below provides the products procured under DSP III and products to be procured under DSP IV that contribute to Default Supply for that Class during that time period and that should be considered in determining whether Load Caps apply to a particular Default Supplier. The products procured under DSP III are italicized. For example, at any given point in time in the period from December 1, 2020 to May 31, 2021, the Default Supply for the RES Class includes the following products: RES-24-Dec19, RES-24-Jun19, RES-12-Dec20, RES-24-Dec20, RES-12-Jun20, RES-24-Jun20.

**Table I-4. Load Caps.**

Class	Time Period	Products that contribute to Default Supply during time period	
		From DSP III	From DSP IV
RES	Jun-Nov17	RES-24-Dec15 RES-24-Jun16 RES-12-Dec16 RES-24-Dec16	RES-12-Jun17 RES-24-Jun17
	Dec17-May18	RES-24-Jun16 RES-24-Dec16	RES-12-Jun17 RES-24-Jun17 RES-12-Dec17 RES-24-Dec17
	Jun-Nov18	RES-24-Dec16	RES-24-Jun17 RES-12-Dec17 RES-24-Dec17 RES-12-Jun18 RES-24-Jun18
	Dec18-May19		RES-24-Jun17 RES-24-Dec17 RES-12-Jun18 RES-24-Jun18 RES-12-Dec18 RES-24-Dec18
	Jun-Nov19		RES-24-Dec17 RES-24-Jun18 RES-12-Dec18 RES-24-Dec18 RES-12-Jun19 RES-24-Jun19
	Dec19-May20		RES-24-Jun18 RES-24-Dec18 RES-12-Jun19 RES-24-Jun19 RES-12-Dec19 RES-24-Dec19
	Jun-Nov20		RES-24-Dec18 RES-24-Jun19 RES-12-Dec19 RES-24-Dec19 RES-12-Jun20 RES-24-Jun20
	Dec20-May21		RES-24-Jun19 RES-24-Dec19 RES-12-Jun20 RES-24-Jun20 RES-12-Dec20 RES-24-Dec20
SC	Jun-Nov17	SC-12-Dec16	SC-12-Jun17 SC-24-Jun17
	Dec17-May18		SC-12-Jun17 SC-24-Jun17 SC-12-Dec17 SC-24-Dec17

Class	Time Period	Products that contribute to Default Supply during time period	
		From DSP III	From DSP IV
	Jun-Nov18		SC-24-Jun17 SC-12-Dec17 SC-24-Dec17 SC-12-Jun18 SC-24-Jun18
	Dec18-May19		SC-24-Jun17 SC-24-Dec17 SC-12-Jun18 SC-24-Jun18 SC-12-Dec18 SC-24-Dec18
	Jun-Nov19		SC-24-Dec17 SC-24-Jun18 SC-12-Dec18 SC-24-Dec18 SC-12-Jun19 SC-24-Jun19
	Dec19-May20		SC-24-Jun18 SC-24-Dec18 SC-12-Jun19 SC-24-Jun19 SC-12-Dec19 SC-24-Dec19
	Jun-Nov20		SC-24-Dec18 SC-24-Jun19 SC-12-Dec19 SC-24-Dec19 SC-12-Jun20 SC-24-Jun20
	Dec20-May21		SC-24-Jun19 SC-24-Dec19 SC-12-Jun20 SC-24-Jun20 SC-12-Dec20 SC-24-Dec20
CCI	Any		CCI-12

I.2.11. The RFP Rules for each solicitation will contain a table with the available tranches and Load Caps for that solicitation specifically as well as an explanation of the Load Caps for that solicitation. These are provided below:

**Table I-5. Available Tranches and Load Caps (RES Class).**

Products	Available Tranches	Load Caps Apply to an RFP Bidder When an RFP Bidder Has:	Load Caps for RES Class
RES-12-Jun17	12	Won more than 19 RES-24-Dec15, RES-24-Jun16, RES-12-Dec16, and RES-24-Dec16 tranches under DSP III	31 less RES-24-Dec15, RES-24-Jun16, RES-12-Dec16, and RES-24-Dec16 tranches won under DSP III
RES-24-Jun17	11	Won more than 20 RES-24-Dec15, RES-24-Jun16, RES-12-Dec16, and RES-24-Dec16 tranches under DSP III	

**Table I-6. Available Tranches and Load Caps (SC and CCI Classes).**

Products	Available Tranches	Load Caps Apply to an RFP Bidder When an RFP Bidder Has:	Load Caps
SC-12-Jun17	9	Won more than 3 SC-12-Dec16 under DSP III	12 less SC-12-Dec16 tranches won under DSP III
SC-24-Jun17	3	Won more than 9 SC-12-Dec16 under DSP III	
CCI-12-Jun17	8	Load Caps apply always	4

- The Load Cap for the RES Class will apply as follows. An RFP Bidder is limited to 31 tranches of the RES-24-Dec15, RES-24-Jun16, RES-12-Dec16, RES-24-Dec16, RES-12-Jun17, and RES-24-Jun17 products combined, including tranches of RES-24-Dec15, RES-24-Jun16, RES-12-Dec16, and RES-24-Dec16 won under DSP III and tranches bid for RES-12-Jun17 and RES-24-Jun17 in this solicitation.
- The Load Cap for the SC Class will apply as follows. An RFP Bidder is limited to 12 tranches for the SC-12-Dec16, SC-12-Jun17, and SC-24-Jun17 products combined, including tranches of SC-12-Dec16 won in DSP III and tranches bid for SC-12-Jun17 and SC-24-Jun17 in this solicitation.
- The Load Cap for the CCI Class will apply as follows. In this solicitation, an RFP Bidder is limited to 4 tranches for the CCI-12-Jun17 product.

I.2.12. A supplier participating in this RFP bids to provide Default Supply for one or more of the RES, SC, and CCI Classes, and for one or more supply periods. The obligations of the Default Supplier are

described in the “Uniform SMA”. The term Uniform SMA is an abbreviation for PECO Energy Company Pennsylvania Default Service Supplier Master Agreement, which may also be abbreviated by “SMA”, “DS Supplier Master Agreement” or “Supplier Master Agreement”. The main provisions of the Uniform SMA are summarized in Section I.4.

- I.2.13. The contingency plan in the event that PECO is unable to obtain Default Supply for all tranches of a product in a solicitation is as follows. If the product is more than six (6) months in duration, PECO will assume responsibility for the unfilled tranches as a PJM LSE for the first six (6) months of the supply period, acquiring the necessary supply through PJM-administered markets and obtaining sufficient AECs at market prices to satisfy any near-term obligations under the AEPS Act. The unfilled tranches, with a supply period that starts six (6) months later than tranches that were unfilled, will be placed for re-bid in the next solicitation. For products that are six (6) months or shorter, PECO will assume responsibility for the unfilled tranches as an LSE and will acquire the necessary supply through PJM-administered markets for the entire supply period. PECO reserves the right to file an alternate plan with the Commission.
- I.2.14. Any prospective supplier that meets the qualification standards established in these RFP Rules and that is willing to provide prices at which to serve tranches of Default Service Load can respond to this RFP, including any PECO affiliates.

### **I.3. Process**

- I.3.1. Prior to a typical solicitation, a supplier unable to use the Guaranty provided as Appendix G to the Uniform SMA (the “Standard Guaranty”) can request consideration by PECO of an alternate form of guaranty that the supplier uses in its normal course of business. Such request must be received no later than fifteen (15) business days prior to the opening of the Part 1 Window. Within three (3) business days of receipt of such a request, the Independent Evaluator will issue a timetable for receipt of the materials from the supplier and for consideration of these materials by PECO. This timetable will be such that a final decision on whether to accept the supplier’s alternate form of guaranty will be communicated to the supplier prior to the Part 1 Window.

- I.3.2. To qualify for a typical solicitation, suppliers provide materials to respond to the qualification standards described in Article IV. RFP Bidders that did not qualify in a previous solicitation under DSP IV use the Standard Part 1 Form available online through the Proposal submission website to respond to these qualification standards. Previously qualified RFP Bidders under DSP IV may participate in an abbreviated qualification process by using the Short Part 1 Form available online through the Proposal submission website to respond to these qualification standards. An Illustrative Standard Part 1 Form and an Illustrative Short Part 1 Form are available as Appendix 3 and Appendix 4 respectively to these RFP Rules and are also available electronically on the RFP website: [www.PECOProcurement.com](http://www.PECOProcurement.com). The generic term “Part 1 Form” refers either to the Standard Part 1 Form or the Short Part 1 Form. Part 1 Proposals are submitted during the “Part 1 Window”.
- I.3.3. To become eligible to bid for a solicitation, RFP Bidders that have met the qualification standards of Article IV must respond to the Part 2 Proposal requirements described in Article V of these RFP Rules. RFP Bidders use the Part 2 Form available online through the Proposal submission website to respond to these requirements. RFP Bidders that became eligible to submit Bids in a previous solicitation held under DSP IV may participate in an abbreviated process by using the Short Part 2 Form available online through the Proposal submission website to respond to these requirements. The generic term “Part 2 Form” refers either to the Standard Part 2 Form or the Short Part 2 Form. Part 2 Proposals are submitted during the “Part 2 Window”.
- I.3.4. RFP Bidders use the Bid Form provided by the Independent Evaluator to submit their Bids. A sample Bid Form is provided for illustrative purposes as Appendix 10 of these RFP Rules. Each RFP Bidder’s Bids must be received between 10 AM and 12 PM (noon) on the “Bid Date” or “Bid Proposal Due Date”.
- I.3.5. On the first business day after the Bid Date, the Independent Evaluator presents to the Commission the results of the solicitation in a confidential report. The Commission has one (1) business day to consider the report of the Independent Evaluator and to approve or reject each of the winning Bids. If the PaPUC does not act within one (1) business day, the winning Bids are deemed to be approved.

- I.3.6. PECO and each RFP Bidder with Bids that are approved by the Commission proceed to the execution of the Uniform SMA and the Transaction Confirmations within one (1) business day of the Commission decision. PECO and each such RFP Bidder execute a single Uniform SMA during the course of DSP IV. Each solicitation, PECO and each such RFP Bidder execute one (1) Transaction Confirmation for each product for which such RFP Bidder has Bids that are approved by the Commission. Appendix E to the Uniform SMA specifies the AEPS percentage obligations in effect on the Bid Date for the period covered by each Transaction Confirmation.
- I.3.7. Within fifteen (15) days of the close of the solicitation, the Independent Evaluator releases the weighted average price for each product procured as well as the percentage of load represented by each tranche.

#### **I.4. Supplier's Obligations**

- I.4.1. A supplier selected through this RFP to provide Default Supply for a particular Class and approved by the Commission becomes a "Default Supplier" for that Class. A Default Supplier may be providing Default Supply for one or more of the RES, SC, and CCI Classes.
- I.4.2. This Section describes in general terms several provisions of the Uniform SMA. This is a summary only and is subject to and qualified in its entirety by the Uniform SMA provided as Appendix 1 to the RFP Rules. Each RFP Bidder accepts the obligations and associated rights to provide Default Supply as defined in the Uniform SMA as part of its Proposal.
- I.4.3. Default Suppliers for a Class will serve the Company's Default Load for that Class. Default Service for one of these Classes is the Company's full requirements service including, without limitation, energy, capacity, transmission (excluding Network Integration Transmission Service), ancillary services, AECs for compliance with the AEPS Act, transmission and distribution losses, congestion management costs, and such other services or products that are required to serve the specified percentage of Default Load for that Class (except for distribution service). Default Load for the RES Class is reduced by a fractional percentage of committed energy and capacity obtained under contract with Allegheny Electric Cooperative, Inc. for supply from the New York Power Authority.

- I.4.4. Default Suppliers are also responsible for providing AECs during the term of the Uniform SMA necessary for PECO to meet its obligations under the AEPS Act, as well as other Orders, regulations and rules that may be promulgated by the PaPUC with respect to the AEPS. Default Suppliers will be required to participate in the PJM Generation Attribute Tracking System (“PJM-EIS GATS”) to transfer AECs to PECO. The Company will provide an estimate of the Default Supplier’s AEPS obligation following the second quarter of the AEPS Reporting Period and the Default Supplier will be required to transfer AECs to PECO in the amount of the estimate within forty-five (45) calendar days of the date of that estimate. The Company will provide a final statement to the Default Supplier within thirty (30) calendar days of the end of AEPS Reporting Period and the Default Supplier will be required to transfer AECs in the amount of the final statement within forty-five (45) calendar days after the date of the final statement.
- I.4.5. A Default Supplier that fails to provide sufficient AECs for a tranche will be required to pay any AEPS penalties, costs, charges, etc. assessed against the Default Supplier and/or the Company associated with the Default Supplier’s non-performance with AEPS requirements.
- I.4.6. PECO has obtained AECs from separate AEPS procurement(s) approved by the Commission and PECO will reduce the amount of AECs that Default Suppliers must provide. Prior to each solicitation, PECO will inform RFP Bidders of the amounts of AECs allocated for this purpose for each tranche of each product for which Default Supply is procured in that solicitation.
- I.4.7. A Default Supplier for a product will be paid a supplier-specific price for each MWh of electric load served as specified in the Transaction Confirmation for that product. The supplier-specific price for a Default Supplier for a product will be the average of approved Bids for that Default Supplier and for that product. The PJM day-ahead price for energy and the Reliability Pricing Model (“RPM”) price for capacity are also paid to a Default Supplier providing full requirements service on a spot-price basis.
- I.4.8. The Default Supplier will specify in the Transaction Confirmation the price of each type of AECs included in its supplier-specific price.
- I.4.9. PECO will transfer or assign Auction Revenue Rights (“ARRs”) to each Default Supplier in proportion to the percentage of Default Load that it serves. A Default Supplier will participate in



the PJM process for the nominations of ARRs to the extent that the supply period under the Transaction Confirmation is inclusive of the PJM Planning Period for which the ARRs are nominated; otherwise, PECO will participate in the PJM ARR nomination process.

## ARTICLE II. Information and Schedule

### II.1. RFP Website

II.1.1. PECO and its Independent Evaluator have established an RFP website that is the main source of information. RFP Bidders and other stakeholders can visit this RFP website to obtain information and documents related to this RFP. The RFP website address is [www.PECOProcurement.com](http://www.PECOProcurement.com).

II.1.2. The RFP website contains the sections described below. New sections may be added as necessary to assist RFP Bidders.

Home: This section provides announcements of interest to RFP Bidders and to other interested parties, an outline of the RFP process, a search function, and a summary of important dates.

Background: These sections provide background information on the regulatory process, the results of previous solicitations and archives of documents. FAQs and announcements from previous solicitations are provided for reference purposes only.

Supplier Information: This section provides documents regarding the RFP as well as frequently asked questions (“FAQs”), and RFP-related announcements. All stakeholders, including RFP Bidders, are able to ask questions via a web form. The Independent Evaluator provides an answer to the question via email to the questioner, and a copy of the question and answer is posted so that all stakeholders and RFP Bidders have access to the same information. Aspects of the question and/or answer that might identify the party asking the question are removed before posting to the extent practical.

Data Room: This section provides historical data to assist prospective suppliers. Links to the PJM website and related documents can also be found in this section.

Calendar: This section provides the timeline for the main events in the current and upcoming solicitations.

Contact Us: This section gives any stakeholder an opportunity to register its email address to receive updates and announcements regarding this RFP. The section also provides the contact information for the Independent Evaluator, an electronic web form to submit questions to the

Independent Evaluator, and a web form for prospective suppliers to register for bidder information sessions.

## II.2. RFP Schedule

II.2.1. The schedule for this solicitation is provided below.

**Table II-1. General Schedule.**

<b>Event</b>	<b>Timing</b>
Deadline to request consideration of an alternate form of guaranty	Tuesday, January 31, 2017
Bidder Information Webcast	Friday, February 10, 2017
Part 1 Window Opens	Wednesday, February 22, 2017
Part 1 Date (Part 1 Window Closes)	Tuesday, February 28, 2017
Part 1 Notification Date	Thursday, March 2, 2017
Approved modifications to Standard Guaranty posted	Friday, March 3, 2017
Part 2 Proposal Window Opens	Friday, March 3, 2017
Bid Submission training	Monday, March 6, 2017
Part 2 Date (Part 2 Window Closes)	Thursday, March 9, 2017
Part 2 Notification Date	Monday, March 13, 2017
Bid Date (Bids are Due)	Tuesday, March 14, 2017
IE provides its report to the PaPUC	Wednesday, March 15, 2017
PaPUC Decision (close of business)	Thursday, March 16, 2017
<i>If Bids are approved by the PaPUC:</i>	
PECO and each winning RFP Bidder proceed to execution of the Uniform SMA and each Transaction Confirmation	Within three business days of the Bid Date

II.2.2. A total of eight (8) solicitations are planned under DSP IV. The Bid Dates for the current and future solicitations are provided below.

**Table II-2. Bid Dates.**

<b>Solicitation</b>	<b>Bid Dates</b>
March 2017	Tuesday, March 14, 2017
September 2017	Tuesday, September 26, 2017
March 2018	Tuesday, March 13, 2018
September 2018	Tuesday, September 25, 2018
March 2019	Tuesday, March 12, 2019
September 2019	Tuesday, September 24, 2019
March 2020	Tuesday, March 10, 2020
September 2020	Tuesday, September 29, 2020

- II.2.3. The date for each event in future solicitations is provided in the Tentative Schedule for Future Solicitations attached as Appendix 11 to these RFP Rules. The schedule for a solicitation may be amended if circumstances warrant. Any such amendments will be posted to the RFP website.
- II.2.4. Specific times for submission of materials for the Part 1 Proposals, the Part 2 Proposals, and the Bids are provided elsewhere in this RFP. All such times are Eastern Prevailing Time (“EPT”) unless specifically noted.

### **ARTICLE III. General Requirements for Proposals**

- III.1.1. An entity that submits any part of a response to this RFP for a solicitation is an “RFP Bidder”. An RFP Bidder can submit at most one Part 1 Proposal and one Part 2 Proposal for each solicitation. An RFP Bidder that qualifies for a solicitation by submitting a Part 1 Proposal that fulfills all requirements described in Article IV and that submits a Part 2 Proposal that fulfills all the requirements described in Article V is eligible to submit Bids in that solicitation. Aside from submission of financial guarantees to support its Bids, all materials for the Part 1 Proposals and all Part 2 Proposals are submitted to the Independent Evaluator online through the online Proposal submission website in accordance with the instructions provided in Article VII.
- III.1.2. The submission of a Part 1 Proposal or a Part 2 Proposal to the Independent Evaluator constitutes the RFP Bidder’s acknowledgement and acceptance of all the terms and conditions of this RFP, regardless of the outcome of the solicitation or the outcome of such Proposal.
- III.1.3. Each solicitation will have a Part 1 Window during which Part 1 Proposals may be submitted. The last day of the Part 1 Window is the “Part 1 Date”. The requirements of the Part 1 Proposal are described in Article IV. “Previously qualified RFP Bidder” means an RFP Bidder that met the qualification standards in a previous solicitation under DSP IV by submitting a Part 1 Proposal that fulfilled all the requirements of Article IV. A previously qualified RFP Bidder may participate in an abbreviated Part 1 Proposal process. A supplier selected through the competitive bidding process under DSP IV to provide Default Supply for a particular Class and approved by the Commission becomes a Default Supplier for that Class.
- III.1.4. The exclusive method for an RFP Bidder to complete the Part 1 Proposal is to submit the online Part 1 Form as well as provide Inserts to the Part 1 Form available as separate Word Forms on the Proposal submission website or from the Independent Evaluator. Documents (supporting documents, draft Letter of Credit or draft Standard Guaranty, and Inserts) may be uploaded to the Proposal submission website or sent to the Independent Evaluator by email at [PECOProcurement@nera.com](mailto:PECOProcurement@nera.com).

- III.1.5. Each RFP Bidder must comply with all Part 1 Proposal requirements described in Article IV. Section IV.1 describes the contact information and representations required. Section IV.2 describes financial requirements including requirements that apply to RFP Bidders relying on the financial standing of an RFP Guarantor and additional requirements applicable only to RFP Bidders submitting a Proposal under an Agency Agreement. Section IV.3 describes the process by which RFP Bidders may propose modifications to the credit instruments (the Standard Pre-Bid Letter of Credit, the Standard Post-Bid Letter of Credit, and the Standard Guaranty) and describes the information that an RFP Bidder is asked to provide for the Independent Evaluator to prepare the Uniform SMA documents should the Independent Evaluator identify one or more of the RFP Bidder's Bids to the Commission as winning Bids. Section IV.4 describes the representations required. Section IV.5 lists additional requirements applicable only to RFP Bidders that have not been incorporated or otherwise formed under the laws of a state of the United States or of the District of Columbia ("Foreign RFP Bidders"), or to RFP Bidders that rely on the financial standing of an entity that has not been incorporated or otherwise formed under the laws of a state of the United States or of the District of Columbia ("Foreign Entity"). Each of the Sections of Article IV explains the abbreviated Part 1 Proposal process in which previously qualified RFP Bidders may participate.
- III.1.6. The Independent Evaluator informs each RFP Bidder of whether it has met all qualification standards of Article IV through a Part 1 Notification that the Independent Evaluator sends to the RFP Bidder by the Part 1 Notification Date. The Independent Evaluator transmits within two (2) business days of the Part 1 Notification Date to each RFP Bidder that has a successful Part 1 Proposal a number of documents and instructions, called the "Part 1 Materials".
- III.1.7. All information provided and certifications made in the Part 1 Proposal must remain valid and remain in full force and effect until six (6) business days after the Bid Date. Regardless of the reason, if any information provided in the Part 1 Proposal changes or any previous certification fails to remain valid, it is the sole responsibility of the RFP Bidder to notify the Independent Evaluator as soon as practicable. Failing to do so may result in disqualification of the RFP Bidder and of its

Proposal. The Independent Evaluator reserves the right to change the assessment of an RFP Bidder's qualifications based on any revised information provided by the RFP Bidder.

- III.1.8. Each solicitation will have a Part 2 Window during which Part 2 Proposals may be submitted. The last day of the Part 2 Window is the "Part 2 Date". RFP Bidders also have the option to submit the representations and certifications required by the Part 2 Form during the Part 1 Window for early processing. The requirements of the Part 2 Proposal are described in Article V. "Previously eligible RFP Bidder" means an RFP Bidder that became eligible to submit Bids in a previous solicitation held under DSP IV by submitting a Part 1 Proposal that fulfilled all the requirements of Article IV and a Part 2 Proposal that fulfilled all the requirements of Article V. A previously eligible RFP Bidder may participate in an abbreviated Part 2 Proposal process.
- III.1.9. The exclusive method for an RFP Bidder to complete the Part 2 Proposal is to submit the online Part 2 Form as well as provide an executed Pre-Bid Letter of Credit. Any documents required by the Part 2 Proposal may be uploaded to the Proposal submission website or sent to the Independent Evaluator by email at [PECOProcurement@nera.com](mailto:PECOProcurement@nera.com).
- III.1.10. Each RFP Bidder must comply with all Part 2 Proposal requirements described in Article V. Section V.1 describes the contact information and representations required by the Part 2 Proposal. Section V.2 describes the Pre-Bid Letter of Credit required to support the RFP Bidder's Bids. Section V.3 lists additional requirements for RFP Bidders relying on the financial standing of an RFP Guarantor. Section V.4 lists additional requirements applicable only to RFP Bidders submitting a Proposal under an Agency Agreement. Section V.5 lists additional requirements applicable only to Foreign RFP Bidders or to RFP Bidders that rely on the financial standing of a Foreign Entity. Each of the Sections of Article V explains the abbreviated Part 2 Proposal process in which previously eligible RFP Bidders may participate.
- III.1.11. The Independent Evaluator informs each RFP Bidder of whether it has met all qualification standards of Article IV and all requirements of Article V so that it is eligible to submit Bids through a Part 2 Notification. The Independent Evaluator sends the Part 2 Notification to the RFP Bidder by the Part 2 Notification Date.

- III.1.12. All information provided and certifications made in the Part 2 Proposal must remain valid and remain in full force and effect until six (6) business days after the Bid Date. Regardless of the reason, if any information provided in the Part 2 Proposal changes or any previous certification fails to remain valid, it is the sole responsibility of the RFP Bidder to notify the Independent Evaluator as soon as practicable. Failing to do so may result in disqualification of the RFP Bidder and of its Proposal. The Independent Evaluator reserves the right to change the assessment of an RFP Bidder's eligibility to submit Bids based on any revised information provided by the RFP Bidder.
- III.1.13. For a given solicitation, all representations and certifications required by this RFP must be made by a single individual who serves as "Officer of the RFP Bidder". An Officer of the RFP Bidder is an individual authorized to undertake contracts (including the Uniform SMA) and bind that RFP Bidder. As a requirement of the Part 1 Proposal, the RFP Bidder must name an individual who serves as Officer of the RFP Bidder and must provide full contact information for this individual. The Officer of the RFP Bidder may sign all representations and certifications of the Part 1 Form and Part 2 Form at one time and RFP Bidders have the option to submit certifications required by the Part 2 Form during the Part 1 Window for early processing.
- III.1.14. The Officer of the RFP Bidder named in the Part 1 Proposal will sign, or will nominate another authorized individual to execute the Uniform SMA as well as any Transaction Confirmations if any of the RFP Bidder's Bids are approved by the Commission.
- III.1.15. Each RFP Bidder must comply with the instructions for the submission of Bids provided with its Part 1 Notification. Article VI describes in general terms the requirements for the submission of Bids.
- III.1.16. Proposals that do not adhere to the terms and conditions of this RFP, or that do not fulfill all requirements of Article IV, Article V, and Article VI of this RFP, or that are not submitted in accordance with the process of Article VII or in accordance with the instructions provided by the Independent Evaluator in an addendum to these RFP Rules, will not be considered.
- III.1.17. The Independent Evaluator will send to each RFP Bidder that submitted a successful Part 1 Proposal in a previous solicitation under DSP IV an email confirming its status as a previously qualified RFP Bidder. Such RFP Bidder may participate in an abbreviated Part 1 Proposal process.



The Independent Evaluator will send to each RFP Bidder that submitted a successful Part 1 Proposal and a successful Part 2 Proposal in a previous solicitation under DSP IV an email confirming its status as a previously eligible RFP Bidder. Such RFP Bidder may participate in an abbreviated Part 1 Proposal process and an abbreviated Part 2 Proposal process.

- III.1.18. The RFP Bidder, at its own cost and expense, shall defend PECO, and the Independent Evaluator and their subsidiaries, affiliates, successors and assigns, and each and every one of their respective past, present, or future officers, directors, trustees, employees, shareholders, executors, administrators, successors and assigns, other than entities that are also RFP Bidders, against any and all manner of past, present, or future claims, demands, disputes, controversies, complaints, suits, actions, proceedings, or allegations of any kind which in any manner relate to, arise out of, or result from any false statement in the Proposal or breach of any covenant by the RFP Bidder set forth herein. The RFP Bidder shall indemnify and hold harmless PECO, the Independent Evaluator, their parent companies, subsidiaries, affiliates, successors and assigns, and each and every one of their respective past, present, or future officers, directors, trustees, employees, shareholders and agents, as well as the heirs, executors, administrators, successors and assigns, other than entities that are RFP Bidders, against any and all liens, judgments, liabilities, losses, injuries, damages, fees, fines, penalties, costs or expenses which in any manner relate to, arise out of, or result from any false statement or misrepresentation in the Proposal or breach of any warranty by the RFP Bidder as set forth herein.

## **ARTICLE IV. Part 1 Proposal Requirements**

Previously qualified RFP Bidders under DSP IV may participate in an abbreviated qualification process by using the Short Part 1 Form available online through the Proposal submission website to respond to these qualification standards. In this solicitation, no RFP Bidder is previously qualified and no RFP Bidder is a Default Supplier.

### **IV.1. Contact Information and Representations**

IV.1.1. Contact Information for the RFP Bidder. Each RFP Bidder must provide the RFP Bidder's legal name and address.

- An RFP Bidder that has not previously qualified must submit this contact information in its Part 1 Proposal.
- A previously qualified RFP Bidder either must confirm that the previously provided contact information remains valid or must update this information. If the RFP Bidder updates the RFP Bidder's legal name, the RFP Bidder must provide evidence of the change of name. If there was a change in the corporate structure of the RFP Bidder, through a merger for example, the RFP Bidder may not participate in the abbreviated Part 1 Proposal or Part 2 Proposal process.

IV.1.2. Officer of the RFP Bidder. The Officer of the RFP Bidder must be an officer, a director, or an individual otherwise authorized to undertake contracts (including the Uniform SMA) and bind the RFP Bidder. The Officer of the RFP Bidder whose contact information is provided in the Part 1 Proposal must make all representations required by the online Part 1 Form. Should the RFP Bidder submit a Part 2 Proposal, the individual named as Officer of the RFP Bidder in the Part 1 Proposal must make the representations required by the online Part 2 Form. The Officer of the RFP Bidder may sign all representations and certifications of the online Part 1 Form and online Part 2 Form at one time and RFP Bidders have the option to submit the certifications required by the Part 2 Form during the Part 1 Window for early processing.

- If an RFP Bidder has not previously qualified under DSP IV, or if the individual who served as Officer of the RFP Bidder for a previously qualified RFP Bidder is not available in this solicitation, then the RFP Bidder must provide the name, title, and full contact information (address, phone number, email address) of the individual who will serve as Officer of the RFP Bidder.
- If an RFP Bidder has previously qualified and the individual who served as Officer of the RFP Bidder in a previous solicitation is available for this solicitation, the RFP Bidder either must confirm that the previously submitted contact information for the Officer of the RFP Bidder remains valid or must update this information.

IV.1.3. Representative of the RFP Bidder. The Independent Evaluator uses the Representative as the main point of contact for the RFP Bidder. The Independent Evaluator contacts the Representative if the Independent Evaluator requires additional information regarding the RFP Bidder's Proposal. The Independent Evaluator sends correspondence related to the solicitation to the Representative, including confidential information required to submit Bids on the Bid Date.

- If an RFP Bidder has not previously qualified, the Officer of the RFP Bidder must designate an individual to serve as Representative of the RFP Bidder by completing the Representative Insert prepared for this purpose and available on the Proposal submission website. The RFP Bidder provides the Representative Insert by upload to the online Part 1 Form. The RFP Bidder must provide the name, title, and full contact information (address, phone number, email address) of the individual named by the Officer of the RFP Bidder who will serve as Representative of the RFP Bidder.
- A previously qualified RFP Bidder either must confirm that the previously submitted contact information for the Representative of the RFP Bidder remains valid or must update this information. The Officer of the RFP Bidder may, at his or her option, name another individual to serve as Representative of the RFP Bidder by completing the Representative Insert. The RFP Bidder provides the Representative Insert by upload to the online Part 1 Form.

IV.1.4. Nominees. The Independent Evaluator provides notifications to the RFP Bidder by email and provides documents needed for participation by secure file transfer. Whether or not an RFP Bidder has previously qualified, the RFP Bidder may designate up to three (3) authorized individuals to receive communications from the Independent Evaluator in addition to the Representative of the RFP Bidder. Each such authorized individual is a Nominee. Either the Representative of the RFP Bidder or the Officer of the RFP Bidder may complete the Nominee Insert prepared for this purpose. The Nominee Insert requires that the following be provided for each authorized individual who will serve as Nominee: the individual's name and title, phone number, and email address. The RFP Bidder provides the Nominee Insert by upload to the online Part 1 Form. The Representative of the RFP Bidder or the Officer of the RFP Bidder may designate such other authorized individuals at any time during the solicitation using the Nominee Insert. The RFP Bidder is not required to do so in the Part 1 Proposal provided, however, that the total number of Nominees not exceed three (3) individuals at any one time.

IV.1.5. All information required by this Section IV.1 must be provided exclusively by completing Section 1 of the online Part 1 Form and the Inserts prepared for this purpose, as further explained in Article VII. Inserts must be submitted by upload to the online Part 1 Form. In case of technical difficulties, documents or Inserts may be sent by email to the Independent Evaluator at [PECOProcurement@nera.com](mailto:PECOProcurement@nera.com).

## **IV.2. Financial Requirements and Agency Agreements**

IV.2.1. Agency Agreement. The RFP Bidder must state whether it is submitting a Proposal under an agency authorization ("Agency Agreement"). If an RFP Bidder is submitting a Proposal under an Agency Agreement, the RFP Bidder must identify a Principal as the entity on whose financial standing the RFP Bidder relies, as further explained in the next paragraph.

IV.2.2. Election of Entity on Whose Financial Standing the RFP Bidder is relying. For purposes of submitting to the requirements of this section, each RFP Bidder elects: (a) to rely on its own financial standing; or: (b) to rely on the financial standing of an "RFP Guarantor"; or: (c) to rely on the financial standing of a Principal. An RFP Bidder submitting a Proposal under an Agency

Agreement must select option (c) and option (c) may only be selected by an RFP Bidder submitting a Proposal under an Agency Agreement.

- An RFP Bidder that has not previously qualified must clearly select one of these options.
- A previously qualified RFP Bidder must confirm that the identity of the entity on whose financial standing the RFP Bidder last relied remains valid in order to participate in the abbreviated Part 1 Proposal process. If such RFP Bidder changes the identity of the entity on whose financial standing the RFP Bidder relies, the RFP Bidder must use the Standard Part 1 Form and submit all information required for the Part 1 Proposal as if the RFP Bidder had not previously qualified.
- A previously qualified RFP Bidder must either confirm that the previously provided legal name of the entity on whose financial standing the RFP Bidder relies remain valid or the RFP Bidder must update this information. If the RFP Bidder updates the entity's legal name, the RFP Bidder must provide evidence of the change of name. If there was a change in the corporate structure of the entity, through a merger for example, the RFP Bidder must use the Standard Part 1 Form to present its Part 1 Proposal.

IV.2.3. Information Required from RFP Bidders Relying on Their Own Financial Standing. The requirements of this paragraph only apply to an RFP Bidder that selects option (a) in response to Paragraph IV.2.2.

- Whether or not the RFP Bidder has previously qualified, an RFP Bidder must submit available financial information for the RFP Bidder by upload to the online Part 1 Form. If available, the RFP Bidder must submit its most recent quarterly financial information, including a balance sheet, income statement, cash flow statement, and any accompanying notes and schedules. If available, the most recent Securities and Exchange Commission ("SEC") Form 10-Q or 10-K (whichever is more recent) must be submitted to fulfill this requirement. If the SEC Form 10-Q/10-K is unavailable, the RFP Bidder must submit its most recent quarterly, monthly or bi-annual financial information accompanied by an attestation by the RFP Bidder's Chief Financial Officer (or similar position) that the information

contained in the financial statements fairly presents in all material respects the financial condition and results of the operations of the RFP Bidder. The requirements for this attestation are provided more specifically in Appendix 5 of these RFP Rules. If such financial information is unavailable for the RFP Bidder, the RFP Bidder must clearly state this fact.

- An RFP Bidder that has not previously qualified must submit all available credit ratings for the RFP Bidder from the following rating agencies: Standard & Poor's Ratings Services ("S&P"), Moody's Investors Service, Inc. ("Moody's"), and Fitch Ratings ("Fitch"). If no ratings are available for the entity, the RFP Bidder must clearly state this fact. A previously qualified RFP Bidder must either confirm that the previously provided credit ratings remain valid or the RFP Bidder must update this information.

IV.2.4. Information Required from RFP Bidders Relying on the Financial Standing of an RFP Guarantor.

The requirements of this paragraph only apply to an RFP Bidder that selects option (b) in response to Paragraph IV.2.2.

- Financial information must be available for the RFP Guarantor.
- If not previously qualified, the RFP Bidder must provide the RFP Guarantor's legal name and address. A previously qualified RFP Bidder must either confirm that the previously provided legal name and address of the RFP Guarantor remain valid or the RFP Bidder must update this information. If the RFP Bidder updates the RFP Guarantor's legal name, the RFP Bidder must provide evidence of the change of name. If there was a change in the corporate structure of the RFP Guarantor, through a merger for example, the RFP Bidder must use the Standard Part 1 Form to present its Part 1 Proposal.
- An RFP Bidder must submit by upload to the online Part 1 Form, if available, the RFP Guarantor's most recent quarterly financial information, including a balance sheet, income statement, cash flow statement, and any accompanying notes and schedules. If available, the most recent SEC Form 10-Q or 10-K (whichever is more recent) must be submitted to fulfill this requirement. If the SEC Form 10-Q/10-K is unavailable, the RFP Bidder must submit the RFP Guarantor's most recent quarterly, monthly, or bi-annual financial information

accompanied by an attestation by the entity's Chief Financial Officer (or similar position) that the information contained in the financial statements fairly presents in all material respects the financial condition and results of the operations of the entity. The requirements for this attestation are provided more specifically in Appendix 5 of these RFP Rules.

- An RFP Bidder that has not previously qualified must submit all available credit ratings for the RFP Guarantor from the following rating agencies: S&P, Moody's, and Fitch. Such ratings must be available for the RFP Guarantor. A previously qualified RFP Bidder must confirm that the credit ratings last submitted for the RFP Guarantor remain valid or the RFP Bidder must update this information with respect to any or all of the credit ratings. The Independent Evaluator uses the information submitted by such RFP Bidder in the most recent solicitation under this RFP for which the RFP Bidder submitted a successful Part 1 Proposal. If the RFP Bidder updates the information, the RFP Bidder must state the name of the rating agency that has updated its credit rating, the updated credit rating, and the type of rating. The Independent Evaluator may also inquire specifically about one or more credit ratings on file for the entity on whose financial standing the RFP Bidder and ask the RFP Bidder to confirm that no updates have been issued.

IV.2.5. Information Required from RFP Bidders Relying on the Financial Standing of an RFP Principal. The requirements of this paragraph only apply to an RFP Bidder submitting a Proposal under an Agency Agreement that selects option (c) in response to Paragraph IV.2.2.

- If not previously qualified, the RFP Bidder must provide each Principal's legal name and address. A previously qualified RFP Bidder must either confirm that the previously provided legal name and address of each Principal remain valid or the RFP Bidder must update this information.
- If not previously qualified, the RFP Bidder must provide a copy of the agency agreement by upload to the online Part 1 Form. If previously qualified, the RFP Bidder must either confirm that the previously provided document remains valid or the RFP Bidder must update this information.

- If the RFP Bidder is acting as an agent for multiple Principals, the RFP Bidder must identify the Principal with the lowest credit rating as the entity on whose financial standing the RFP Bidder relies. If several Principals have the same lowest credit rating, the RFP Bidder must identify the Principal that also has the lowest tangible net worth as the entity on whose financial standing the RFP Bidder relies. This Principal is referred to as the “RFP Principal”. If there is a single Principal, the single Principal is the “RFP Principal”. Financial information must be available for the RFP Principal.
- An RFP Bidder must submit by upload to the online Part 1 Form, if available, the RFP Principal’s most recent quarterly financial information, including a balance sheet, income statement, cash flow statement, and any accompanying notes and schedules. If available, the most recent SEC Form 10-Q or 10-K (whichever is more recent) must be submitted to fulfill this requirement. If the SEC Form 10-Q/10-K is unavailable, the RFP Bidder must submit the RFP Principal’s most recent quarterly, monthly, or bi-annual financial information accompanied by an attestation by the entity’s Chief Financial Officer (or similar position) that the information contained in the financial statements fairly presents in all material respects the financial condition and results of the operations of the RFP Principal. The requirements for this attestation are provided more specifically in Appendix 5 of these RFP Rules.
- An RFP Bidder that has not previously qualified must submit all available credit ratings for the RFP Principal from the following rating agencies: S&P, Moody’s, and Fitch. Such ratings must be available from at least two rating agencies for the RFP Principal. A previously qualified RFP Bidder must confirm that the credit ratings last submitted for the RFP Principal remain valid or the RFP Bidder must update this information with respect to any or all of the credit ratings. The Independent Evaluator uses the information submitted by such RFP Bidder in the most recent solicitation under this RFP for which the RFP Bidder submitted a successful Part 1 Proposal. If the RFP Bidder updates the information, the RFP Bidder must state the name of the rating agency that has updated its credit rating, the updated credit rating, and the type of rating. The Independent Evaluator may also inquire specifically about



one or more credit ratings on file for the RFP Principal and ask the RFP Bidder to confirm that no updates have been issued.

- Whether or not an RFP Bidder has previously qualified, the Officer of the RFP Bidder must: (i) certify that the Officer of the RFP Bidder has the authority to bind the Principal(s); and (ii) acknowledge that an Officers' Certificate, signed by an officer of each Principal and substantially in the form of Appendix 6 to these RFP Rules, must be provided with the Part 2 Proposal. The Officer of the RFP Bidder makes this certification and this acknowledgment by completing the P1 Agency Certifications Insert.
- Whether or not the RFP Bidder has previously qualified, the RFP Bidder may, but is not required to, submit a draft Officers' Certificate for evaluation. If an RFP Bidder submits a draft Officers' Certificate for evaluation, the Independent Evaluator will provide this evaluation to the RFP Bidder, including notice of any changes required to the Officers' Certificate, along with the Part 1 Notification. This Officers' Certificate will state that: (i) the Agency Agreement submitted in response to this RFP is a true and complete copy of the Agency Agreement as currently in effect; (ii) the Agency Agreement is in full force and effect and shall remain in full force and effect for a period extending to six (6) business days following the Bid Date; (iii) there are no proceedings pending for the amendment or termination of the Agency Agreement, contemplated by the RFP Bidder, or contemplated by the Principal(s) to the RFP Bidder's knowledge; (iv) each individual who has executed the Officers' Certificate and the Agency Agreement is (or was at the time of the execution of such documents) authorized to execute and deliver such documents on behalf of the Principal(s); and (v) the Officer of the RFP Bidder is authorized to execute the Uniform SMA as well as any Transaction Confirmation(s) pursuant to the Uniform SMA on behalf of the Principal(s).

IV.2.6. All information required by this Section IV.2 must be provided exclusively by completing Section 2 of the online Part 1 Form and the Inserts prepared for this purpose, as further explained in Article VII. Inserts must be submitted by upload to the online Part 1 Form. In case of technical difficulties, documents or Inserts may be sent by email to the Independent Evaluator at [PECOProcurement@nera.com](mailto:PECOProcurement@nera.com).

### **IV.3. Credit Instruments and Uniform SMA**

IV.3.1. Standard Pre-Bid Letter of Credit. RFP Bidders have an opportunity, in the Part 1 Proposal, to propose modifications to the Pre-Bid Letter of Credit.

- Whether or not the RFP Bidder has previously qualified, an RFP Bidder must, in its Part 2 Proposal, submit a Pre-Bid Letter of Credit in an amount of at least: \$250,000 per tranche bid on products of the RES and SC Classes; and \$125,000 per tranche bid on a CCI product. This Pre-Bid Letter of Credit must be in the form of the Standard Pre-Bid Letter of Credit provided as Appendix 9 to these RFP Rules or must incorporate only modifications that have been approved by PECO and provided to RFP Bidders by the Independent Evaluator.
- As part of the Part 1 Proposal, an RFP Bidder may request modifications to the Standard Pre-Bid Letter of Credit that are non-material in nature, or that are advantageous to both PECO and the RFP Bidder. An RFP Bidder requests modifications to the Standard Pre-Bid Letter of Credit by submitting a Draft Pre-Bid Letter of Credit substantially in the form of the Standard Pre-Bid Letter of Credit indicating clearly any and all modifications to the Standard Pre-Bid Letter of Credit. The Draft Pre-Bid Letter of Credit must be submitted in Microsoft Word with tracked changes by upload to the online Part 1 Form. A Draft Pre-Bid Letter of Credit that is not substantially in the form of the Standard Pre-Bid Letter of Credit will not be considered or evaluated.
- All approved modifications to the Standard Pre-Bid Letter of Credit will be posted to the RFP website. Each RFP Bidder may use any of the approved modifications, regardless of whether the RFP Bidder itself or another RFP Bidder proposed the modification.
- An RFP Bidder that chooses not to propose modifications to the Standard Pre-Bid Letter of Credit must clearly state that fact.

IV.3.2. Standard Post-Bid Letter of Credit. RFP Bidders have an opportunity, in the Part 1 Proposal, to propose modifications to the Post-Bid Letter of Credit.

- The Uniform SMA includes, as Appendix F, Letter of Credit Documentation that may be used to post security under the terms of the Uniform SMA. This Paragraph refers to this letter of credit as the “Standard Post-Bid Letter of Credit”.
- Whether or not the RFP Bidder has previously qualified, an RFP Bidder may, in its Part 1 Proposal, request modifications to the Standard Post-Bid Letter of Credit that are non-material in nature, or that are advantageous to both PECO and the RFP Bidder. An RFP Bidder requests modifications to the Standard Post-Bid Letter of Credit by submitting a Draft Post-Bid Letter of Credit substantially in the form of the Standard Post-Bid Letter of Credit indicating clearly any and all modifications to the Standard Post-Bid Letter of Credit. The Draft Post-Bid Letter of Credit must be submitted in Microsoft Word by upload to the online Part 1 Form. A Draft Post-Bid Letter of Credit that is not substantially in the form of the Standard Post-Bid Letter of Credit will not be considered or evaluated.
- All approved modifications to the Standard Post-Bid Letter of Credit will be posted to the RFP website. Each RFP Bidder may use any of the approved modifications, regardless of whether the RFP Bidder itself or another RFP Bidder proposed the modification.
- An RFP Bidder that chooses not to propose modifications to the Standard Pre-Bid Letter of Credit must clearly indicate that fact.

IV.3.3. Standard Guaranty. RFP Bidders have an opportunity, in the Part 1 Proposal, to propose modifications to the Standard Guaranty.

- The Uniform SMA includes, as Appendix G, Guaranty Documentation that may be used to provide a financial guaranty under the terms of the Uniform SMA. This Paragraph refers to this financial guaranty as the “Standard Guaranty”.
- Whether or not the RFP Bidder has previously qualified, an RFP Bidder may, in its Part 1 Proposal, request modifications to the Standard Guaranty that are non-material in nature, or that are advantageous to both PECO and the RFP Bidder. An RFP Bidder requests modifications to the Standard Guaranty by submitting a Draft Guaranty substantially in the form of the Standard Guaranty indicating clearly any and all modifications to the Standard

Guaranty. The Draft Guaranty must be submitted in Microsoft Word by upload to the online Part 1 Form. A Draft Guaranty that is not substantially in the form of the Standard Guaranty will not be considered or evaluated.

- All approved modifications to the Standard Guaranty will be posted to the RFP website. Each RFP Bidder may use any of the approved modifications, regardless of whether the RFP Bidder itself or another RFP Bidder proposed the modification.
- An RFP Bidder that chooses not to propose modifications to the Standard Pre-Bid Letter of Credit must clearly indicate that fact.

IV.3.4. Information to Prepare the Uniform SMA. This paragraph applies only to RFP Bidders that are not Default Suppliers. Such RFP Bidder is asked, in its Part 1 Proposal, to provide all information needed by the Independent Evaluator to prepare for execution the Uniform SMA and its Exhibits by completing the Uniform SMA Insert prepared for this purpose and available on the Proposal submission website. The RFP Bidder provides the Uniform SMA Insert by upload to the online Part 1 Form. If the Independent Evaluator identifies one or more of such RFP Bidder's Bids to the Commission as winning Bids, the Independent Evaluator will use this information to prepare the Uniform SMA and its Exhibits for execution.

- Such RFP Bidder is asked: (i) to specify any elections to be made in the Uniform SMA; and (ii) to provide the contact information required to prepare the Form of Notice, which is included as Exhibit 2 to the Uniform SMA; and (iii) to provide any additional information required to prepare the Uniform SMA and its Exhibits.
- If such RFP Bidder fails to submit these elections and information with the Part 1 Proposal, the Officer of the RFP Bidder must acknowledge that, if the Independent Evaluator notifies the RFP Bidder that the Independent Evaluator is identifying one or more of the RFP Bidder's Bids to the Commission as winning Bids, the RFP Bidder will be required to provide: (i) any elections to be made in the Uniform SMA; and (ii) the contact information to prepare the Form of Notice; and (iii) any additional information required to prepare the Uniform SMA and its Exhibits; by 12 PM (noon) EPT on the day after such notification is received. The

Officer of the RFP Bidder provides the required acknowledgement by completing the Delay (SMA) Insert prepared for this purpose and available on the Proposal submission website.

The RFP Bidder provides the Delay (SMA) Insert by upload to the online Part 1 Form.

IV.3.5. All information required by this Section IV.3 must be provided exclusively by completing Section 3 of the online Part 1 Form and the Inserts prepared for this purpose, as further explained in Article VII. Inserts must be submitted by upload to the online Part 1 Form. In case of technical difficulties, documents or Inserts may be sent by email to the Independent Evaluator at [PECOProcurement@nera.com](mailto:PECOProcurement@nera.com).

#### **IV.4. Representations**

IV.4.1. Representations by the Officer of the RFP Bidder. Whether or not an RFP Bidder has previously qualified, the Officer of the RFP must certify that:

- he/she is an officer, a director, or an individual otherwise authorized to undertake contracts (including the Uniform SMA) and bind the RFP Bidder;
- all information provided in the Part 1 Proposal is true and accurate to the best of the knowledge and belief of the Officer of the RFP Bidder;
- if, for any reason or due to any circumstance, any information provided in the Part 1 Proposal changes or any previous certification fails to remain valid before the sixth business day after the Bid Date, the Officer of the RFP Bidder or the Representative will notify the Independent Evaluator of such changes as soon as practicable but in no event later than one (1) day before the Bid Date;
- the Part 1 Proposal will remain valid and remain in full force and effect until six (6) business days after the Bid Date; and
- the RFP Bidder is not part of a bidding agreement, a joint venture for purposes of participating in any solicitation for this RFP, a bidding consortium, or any other type of agreement related to bidding in any solicitation of this RFP. An RFP Bidder found to be acting in concert with another RFP Bidder may be disqualified by the Independent Evaluator.

The Officer of the RFP Bidder presents such certifications by completing the P1 Certifications (A) Insert prepared for this purpose. The RFP Bidder provides the required Insert by upload to the Part 1 Form.

IV.4.2. Additional Representations for RFP Bidders that have not previously qualified. If an RFP Bidder has not previously qualified, the Officer of the RFP Bidder must certify that:

- he/she understands the terms of the Uniform SMA, that the RFP Bidder accepts all of the terms of the Uniform SMA without modifications, and that the RFP Bidder will execute the Uniform SMA and the Transaction Confirmation(s) for all Bids approved by the Commission;
- the submission of the Part 1 Proposal constitutes the RFP Bidder's acknowledgement and acceptance of all the terms and conditions of the RFP, regardless of the outcome of the solicitation or the outcome of such Proposal;
- the RFP Bidder has no actions at law, suits in equity, proceedings or claims pending or, to the RFP Bidder's knowledge, threatened against it before any federal, state, foreign or local court, tribunal or governmental agency or authority that might materially delay, prevent or hinder the RFP Bidder's performance of its obligations under the Uniform SMA;
- the RFP Bidder is not bankrupt or insolvent and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming bankrupt or insolvent; and
- if the Independent Evaluator notifies the RFP Bidder that the Independent Evaluator is identifying one or more of the RFP Bidder's Bids to the Commission as winning Bids, all information required for the preparation of the Uniform SMA and its Exhibits must be submitted and complete by 12 PM (noon) EPT on the day after such notification is received;

The Officer of the RFP Bidder presents such certifications by completing the P1 Certifications (B) Insert prepared for this purpose. The RFP Bidder provides the required Insert by upload to the Part 1 Form.

IV.4.3. Additional Representations for RFP Bidders have previously qualified but that are not Default Suppliers. If an RFP Bidder has previously qualified but is not a Default Supplier, the Officer of the RFP Bidder must certify that:

- The RFP Bidder has no actions at law, suits in equity, proceedings or claims pending or, to the RFP Bidder's knowledge, threatened against it before any federal, state, foreign or local court, tribunal or governmental agency or authority that might materially delay, prevent or hinder the RFP Bidder's performance of its obligations under the Uniform SMA;
- The RFP Bidder is not bankrupt or insolvent and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming bankrupt or insolvent; and
- if the Independent Evaluator notifies the RFP Bidder that the Independent Evaluator is identifying one or more of the RFP Bidder's Bids to the Commission as winning Bids, all information required for the preparation of the Uniform SMA and its Exhibits must be submitted and complete by 12 PM (noon) EPT on the day after such notification is received.

The Officer of the RFP Bidder presents such certifications by completing the P1 Certifications (C) Insert prepared for this purpose. The RFP Bidder provides the required Insert by upload to the Part 1 Form.

IV.4.4. PJM Load Serving Entity. The requirements of this paragraph apply only to RFP Bidders that are not previously qualified RFP Bidders. A Default Supplier must be an LSE by the start of the supply period.

- An RFP Bidder that has not previously qualified must, in its Part 1 Proposal, either: (i) demonstrate that the RFP Bidder is an LSE in PJM by providing the signature page of the Reliability Assurance Agreement ("RAA"); or (ii) certify that the RFP Bidder has investigated the requirements to become an LSE in PJM and that there exist no impediments for the RFP Bidder to become an LSE by the start of the supply period and to remain an LSE for the duration of the supply period.

- An RFP Bidder that provides the signature page of the RAA does so by upload to the online Part 1 Form.
- An RFP Bidder that submits the certification above does so by completing the LSE Representation Insert prepared for this purpose and available on the Proposal submission website. The RFP Bidder provides the LSE Representation Insert by upload to the online Part 1 Form.

IV.4.5. All information required by this Section IV.4 must be provided exclusively by completing Section 4 of the online Part 1 Form and the Inserts prepared for this purpose, as further explained in Article VII. Inserts must be submitted by upload to the online Part 1 Form. In case of technical difficulties, documents or Inserts may be sent by email to the Independent Evaluator at [PECOProcurement@nera.com](mailto:PECOProcurement@nera.com).

#### **IV.5. Foreign RFP Bidders and Foreign Entities**

IV.5.1. The requirements of this Section apply only to: (1) Foreign RFP Bidders that seek to be granted unsecured credit under the terms of the Uniform SMA; or (2) RFP Bidders that rely on the financial standing of a Foreign Entity (either an RFP Guarantor or a Principal). Other RFP Bidders are not subject to the requirements of this Section.

IV.5.2. Additional requirements for Foreign RFP Bidders. The requirements of this Paragraph apply only to Foreign RFP Bidders that seek to be granted unsecured credit under the terms of the Uniform SMA; other RFP Bidders are not subject to the requirements of this Paragraph.

- Whether or not such RFP Bidder has previously qualified, such RFP Bidder may provide, in addition to supplying all required information and documents under Section IV.2, any additional evidence of creditworthiness so as to provide PECO with comparable assurances of creditworthiness as is applicable for an RFP Bidder that has been incorporated or otherwise formed under the laws of a state of the United States or of the District of Columbia.
- Whether or not such RFP Bidder has previously qualified, the Officer of a Foreign RFP Bidder must acknowledge that the following additional documents are required with the Part 2 Proposal for the Foreign RFP Bidder to be granted unsecured credit under the terms of the



Uniform SMA: (i) a legal opinion of outside counsel qualified to practice in the foreign jurisdiction in which the Foreign RFP Bidder is incorporated or otherwise formed that the Uniform SMA is, or upon the completion of execution formalities will become, the binding obligation of the Foreign RFP Bidder in the jurisdiction in which it has been incorporated or otherwise formed; (ii) the sworn certificate of the corporate secretary (or similar officer) of such Foreign RFP Bidder that the person executing the Uniform SMA on behalf of the Foreign RFP Bidder has the authority to execute the Uniform SMA and that the governing board of such Foreign RFP Bidder has approved the execution of the Uniform SMA; and (iii) the sworn certificate of the corporate secretary (or similar officer) of such Foreign RFP Bidder that the Foreign RFP Bidder has been authorized by its governing board to enter into agreements of the same type as the Uniform SMA.

- Whether or not such RFP Bidder has previously qualified, such RFP Bidder may, but is not required to, submit a draft of the following documents for evaluation: (i) a legal opinion of outside counsel qualified to practice in the foreign jurisdiction in which the Foreign RFP Bidder is incorporated or otherwise formed that the Uniform SMA is, or upon the completion of execution formalities will become, the binding obligation of the Foreign RFP Bidder in the jurisdiction in which it has been incorporated or otherwise formed; (ii) the sworn certificate of the corporate secretary (or similar officer) of such Foreign RFP Bidder that the person executing the Uniform SMA on behalf of the Foreign RFP Bidder has the authority to execute the Uniform SMA and that the governing board of such Foreign RFP Bidder has approved the execution of the Uniform SMA; and (iii) the sworn certificate of the corporate secretary (or similar officer) of such Foreign RFP Bidder that the Foreign RFP Bidder has been authorized by its governing board to enter into agreements of the same type as the Uniform SMA. The Independent Evaluator will make available to RFP Bidders a sample of the legal opinion of outside counsel that is sufficient for a Foreign Entity as Principal. If such RFP Bidder submits a draft of these documents for evaluation, the Independent Evaluator will provide this evaluation to such RFP Bidder, including notice of any changes required to the documents, along with the Part 1 Notification.

- The RFP Bidder presents this information by completing the P1 Foreign Bidder Insert prepared for this purpose and provides associated documents. This Insert is available on the Proposal submission website.

IV.5.3. Additional requirements for RFP Bidders relying on the financial standing of a Foreign Guarantor.

The requirements of this Paragraph apply only to RFP Bidders that rely on the financial standing of a Foreign Entity as RFP Guarantor; other RFP Bidders are not subject to the requirements of this Paragraph.

- Whether or not such RFP Bidder has previously qualified, an RFP Bidder relying on the financial standing of a Foreign Entity as RFP Guarantor may provide, in addition to supplying all required information and documents under Section IV.2, any additional evidence of creditworthiness for the RFP Guarantor so as to provide PECO with comparable assurances of creditworthiness as is applicable for an entity that has been incorporated or otherwise formed under the laws of a state of the United States or of the District of Columbia.
- Whether or not such RFP Bidder has previously qualified, the Officer of such RFP Bidder must acknowledge that the following additional documents are required with the Part 2 Proposal for the Foreign Entity as RFP Guarantor to be granted unsecured credit and for the RFP Bidder to rely on the financial standing of the RFP Guarantor under the terms of the Uniform SMA: (i) a legal opinion of outside counsel qualified to practice in the foreign jurisdiction in which the RFP Guarantor is incorporated or otherwise formed that the guaranty pursuant to the Uniform SMA is, or upon the completion of execution formalities will become, the binding obligation of the RFP Guarantor in the jurisdiction in which it has been incorporated or otherwise formed; and (ii) the sworn certificate of the corporate secretary (or similar officer) of such RFP Guarantor that the person executing the guaranty pursuant to the Uniform SMA on behalf of the RFP Guarantor has the authority to execute the guaranty pursuant to the Uniform SMA and that the governing board of such RFP Guarantor has approved the execution of the guaranty pursuant to the Uniform SMA; and (iii) the sworn certificate of the corporate secretary (or similar officer) of such RFP Guarantor that the RFP

Guarantor has been authorized by its governing board to enter into agreements of the same type as the guaranty pursuant to the Uniform SMA.

- Whether or not such RFP Bidder has previously qualified, the RFP Bidder may, but is not required to, submit with its Part 1 Proposal a draft of the following documents: (i) a legal opinion of outside counsel qualified to practice in the foreign jurisdiction in which the RFP Guarantor is incorporated or otherwise formed that the guaranty pursuant to the Uniform SMA is, or upon the completion of execution formalities will become, the binding obligation of the RFP Guarantor in the jurisdiction in which it has been incorporated or otherwise formed; and (ii) the sworn certificate of the corporate secretary (or similar officer) of such RFP Guarantor that the person executing the guaranty pursuant to the Uniform SMA on behalf of the RFP Guarantor has the authority to execute the guaranty pursuant to the Uniform SMA and that the governing board of such RFP Guarantor has approved the execution of the guaranty pursuant to the Uniform SMA; and (iii) the sworn certificate of the corporate secretary (or similar officer) of such RFP Guarantor that the RFP Guarantor has been authorized by its governing board to enter into agreements of the same type as the guaranty pursuant to the Uniform SMA. The Independent Evaluator will make available to RFP Bidders a sample of the legal opinion of outside counsel that is sufficient for a Foreign Entity as Principal. If an RFP Bidder submits a draft of the documents for evaluation, the Independent Evaluator will provide this evaluation to the RFP Bidder, including notice of any changes required to the documents, along with the Part 1 Notification.
- The RFP Bidder presents this information by completing the P1 Foreign Guarantor Insert prepared for this purpose and provides associated documents. This Insert is available on the Proposal submission website.

IV.5.4. Additional Requirements for RFP Bidders submitting a Proposal under an Agency Agreement with a Foreign Entity as Principal. The requirements of this Paragraph apply only to RFP Bidders that rely on the financial standing of a Foreign Entity as RFP Principal; other RFP Bidders are not subject to the requirements of this Paragraph.

- Whether or not such RFP Bidder has previously qualified, an RFP Bidder submitting a Proposal under an Agency Agreement with a Foreign Entity as Principal may, in addition to supplying all required information and documents under Section IV.2, provide any additional evidence of creditworthiness for the Principal so as to provide PECO with comparable assurances of creditworthiness as is applicable for an entity that has been incorporated or otherwise formed under the laws of a state of the United States or of the District of Columbia.
- Whether or not such RFP Bidder has previously qualified, the Officer of such RFP Bidder must acknowledge that the following additional documents are required with the Part 2 Proposal for the RFP Bidder and the Foreign Entity as Principal to be granted unsecured credit under the terms of the Uniform SMA: (i) a legal opinion of outside counsel qualified to practice in the foreign jurisdiction in which the Principal is incorporated or otherwise formed that the Uniform SMA is, or upon the completion of execution formalities will become, the binding obligation of the Principal in the jurisdiction in which it has been incorporated or otherwise formed; and (ii) the sworn certificate of the corporate secretary (or similar officer) of such Principal that the Principal has been authorized by its governing board to enter into agreements of the same type as the Uniform SMA.
- Whether or not such RFP Bidder has previously qualified, such RFP Bidder may, but is not required to, submit with its Part 1 Proposal a draft of the following additional documents: (i) a legal opinion of outside counsel qualified to practice in the foreign jurisdiction in which the Principal is incorporated or otherwise formed that the Uniform SMA is, or upon the completion of execution formalities will become, the binding obligation of the Principal in the jurisdiction in which it has been incorporated or otherwise formed; and (ii) the sworn certificate of the corporate secretary (or similar officer) of such Principal that the Principal has been authorized by its governing board to enter into agreements of the same type as the Uniform SMA. The Independent Evaluator will make available to RFP Bidders a sample of the legal opinion of outside counsel that is sufficient for a Foreign Entity as Principal. If an RFP Bidder submits a draft of the documents for evaluation, the Independent Evaluator will

provide this evaluation to the RFP Bidder, including notice of any changes required to the documents, along with the Part 1 Notification.

- The RFP Bidder presents this information by completing the P1 Foreign Principal Insert prepared for this purpose and provides associated documents. This Insert is available on the Proposal submission website.

IV.5.5. All information required by this Section IV.5 must be provided exclusively by completing Section 5 of the online Part 1 Form and the Inserts prepared for this purpose, as further explained in Article VII. Inserts must be submitted by upload to the online Part 1 Form. In case of technical difficulties, documents or Inserts may be sent by email to the Independent Evaluator at [PECOProcurement@nera.com](mailto:PECOProcurement@nera.com).

## **ARTICLE V. Part 2 Proposal Requirements**

RFP Bidders that became eligible to submit Bids in a previous solicitation held under DSP IV may participate in an abbreviated process by using the Short Part 2 Form available online through the Proposal submission website to respond to these requirements. In this solicitation, no RFP Bidder is previously eligible and no RFP Bidder is a Default Supplier.

### **V.1. Contact Information and Representations**

V.1.1. Contact Information for the RFP Bidder. The RFP Bidder has an opportunity to update contact information provided in the Part 1 Proposal for the RFP Bidder or any individual. Whether or not the RFP Bidder is previously eligible, the RFP Bidder either must confirm that the contact information for the RFP Bidder, the Officer of the RFP Bidder and Representative of the RFP Bidder remains valid or must update this information in the online Part 2 Form. The RFP Bidder may, at any point during the solicitation, provide contact information for Nominees or update this information by submission of the Nominee Insert.

V.1.2. Representations of the Officer of the RFP Bidder. For a given solicitation, all representations and certifications must be made by a single individual who serves as Officer of the RFP Bidder. All representations and certifications required by this RFP may be made at a single point in time and RFP Bidders have the option to submit the online Part 1 Form and the certifications required by the online Part 2 Form together during the Part 1 Window. If an RFP Bidder did not avail itself of this option and if the Officer of the RFP Bidder who made the representations and certifications of the online Part 1 Form is unavailable to make the representations of the online Part 2 Form, the RFP Bidder must re-submit the certifications of the Part 1 Form by email naming a new individual to serve as Officer of the RFP Bidder by the Part 2 Date, and that Officer of the RFP Bidder must make all representations and certifications required by the Part 1 Form and the Part 2 Form. Whether or not the RFP Bidder is previously eligible, the Officer of the RFP Bidder must certify that:

- the Part 2 Proposal will remain valid and remain in full force and effect until six (6) business days after the Bid Date and if any information provided in the Part 2 Proposal changes or any

previous certification fails to remain valid during that time, the RFP Bidder will notify the Independent Evaluator as soon as practicable;

- the RFP Bidder is bidding independently and that it has no knowledge of any information concerning a Proposal by another RFP Bidder in response to this solicitation or any future solicitation under this RFP. Such information includes, but is not limited to: the fact that another RFP Bidder is submitting a Proposal in response to this solicitation or a subsequent solicitation under this RFP; the Bids by another RFP Bidder in this or in a subsequent solicitation under this RFP; the number of tranches bid by another RFP Bidder for any product in this or in a subsequent solicitation under this RFP; the estimation by another RFP Bidder of the value of a tranche of a product; the estimation by another RFP Bidder of the risks associated with providing supply under the Uniform SMA; the preference of another RFP Bidder for bidding on specific products in this or in a subsequent solicitation under the RFP; and the contractual arrangements for power of another RFP Bidder to serve tranches of Default Service Load were that RFP Bidder to become a Default Supplier. This certification must be binding and in effect until the Commission has either approved or rejected each of the winning Bids for this solicitation;
- although the RFP Bidder may disclose aspects of its Proposal in communicating with its financial institution for the purpose of preparing the Pre-Bid Letter of Credit or in communicating with advisors (if any), any such communication is made in a manner that can reasonably be expected to maintain the confidentiality of its Proposal;
- with only the exceptions noted in the immediately previous certification, the RFP Bidder has not disclosed, and will not otherwise disclose, publicly or to any other party any information relating to its Proposal, which could have an effect on whether another party submits a Proposal in any solicitation under the RFP, or on the contents of the Proposal that another RFP Bidder would be willing to submit in response to the RFP. Such information includes, but is not limited to: the fact that the RFP Bidder is submitting a Proposal in response to this RFP; the RFP Bidder's Bids in this or in a subsequent solicitation under this RFP; the RFP Bidder's number of tranches bid for any product in this or in a subsequent solicitation under

this RFP; the RFP Bidder's estimation of the value of a tranche of a product; the RFP Bidder's estimation of the risks associated with providing supply under the Uniform SMA; and the RFP Bidder's preference for bidding on specific products in this or in a subsequent solicitation under this RFP. This certification must be binding and in effect until the Commission has either approved or rejected each of the winning Bids for this solicitation;

- any Bid on any product submitted in response to this RFP for this solicitation is binding until six (6) business days after the Bid Date and constitutes a binding and irrevocable offer to provide service under the terms of the Uniform SMA at the price specified in the Bid;
- the Officer of the RFP Bidder will execute (or will nominate another authorized individual to execute) the Uniform SMA and all Transaction Confirmation(s) for the RFP Bidder's Bids that are approved by the Commission no later than 2PM on the third business day after the Commission has accepted such Bids; and
- In each Transaction Confirmation, the RFP Bidder will specify a price for each type of AECs (Tier I, Tier I Solar, and Tier II) that is included in the RFP Bidder's winning Bids and each such price must be greater than \$0/AEC.

The RFP Bidder submits such certifications by completing the P2 Certifications Insert prepared for this purpose and available on the Proposal submission website. The RFP Bidder provides the P2 Certifications Insert by upload to the online Part 2 Form.

- V.1.3. All information required by this Section V.1 must be provided exclusively by completing Section 1 of the online Part 2 Form and the Inserts prepared for this purpose, as further explained in Article VII. Inserts must be submitted by upload to the online Part 1 Form. In case of technical difficulties, documents or Inserts may be sent by email to the Independent Evaluator at [PECOProcurement@nera.com](mailto:PECOProcurement@nera.com).

## V.2. Pre-Bid Letter of Credit



- V.2.1. Whether or not an RFP Bidder is previously eligible, the RFP Bidder must provide an executed Pre-Bid Letter of Credit, drawn for the account of the RFP Bidder and acceptable to PECO, in an amount of at least: \$250,000 per tranche bid on products for the RES and SC Classes, plus \$125,000 per tranche bid on a product for the CCI Class in accordance with the requirements of this Section V.2. A single Pre-Bid Letter of Credit is submitted even if the RFP Bidder bids on more than one product or if the RFP Bidder bids to supply both full requirements on a fixed-price basis and full requirements on a spot-price basis.
- V.2.2. The RFP Bidder must state whether the Pre-Bid Letter of Credit has already been sent to the Independent Evaluator. The hardcopy executed Pre-Bid Letter of Credit must be sent by overnight delivery service to the Independent Evaluator at the address indicated in the Part 2 Form. RFP Bidders may, but are not required to, upload an electronic executed version of the Pre-Bid Letter of Credit for evaluation.
- V.2.3. The RFP Bidder must either use the Standard Pre-Bid Letter of Credit provided in Appendix 9 to these RFP Rules, or the RFP Bidder must submit a Pre-Bid Letter of Credit that incorporates only those modifications to the Standard Pre-Bid Letter of Credit accepted as a result of the evaluation of the Part 1 Proposals. All approved modifications will be posted to the RFP website. An RFP Bidder may use any of the approved modifications, regardless of whether the RFP Bidder itself or another RFP Bidder proposed the modification. The RFP Bidder cannot, in its Part 2 Proposal, propose or incorporate any modification to its Pre-Bid Letter of Credit other than the modifications approved and posted as such on the RFP website.
- V.2.4. PECO and the Independent Evaluator will release the Pre-Bid Letter of Credit no later than six (6) business days after the Bid Date. An RFP Bidder may, in Section 2 of the Part 2 Form, provide special instructions for the return of the Pre-Bid Letter of Credit. If the Commission does not approve any of the RFP Bidder's Bids, PECO and the Independent Evaluator will release that RFP Bidder's Pre-Bid Letter of Credit within three (3) business days of the Bid Date.
- V.2.5. Payment under the Pre-Bid Letter of Credit can be demanded by PECO if: (i) the RFP Bidder has made a material omission or misrepresentation in its Part 1 Proposal or in its Part 2 Proposal; (ii) the RFP Bidder discloses information relating to its Proposal publicly or to any other party before

the Commission has rendered its decision on the results of this solicitation; or (iii) the RFP Bidder has one or more Bids approved by the Commission and the RFP Bidder fails to execute the Uniform SMA and its Exhibits or fails to meet the creditworthiness requirements within the timeframe required.

V.2.6. All information required by this Section V.2 must be provided exclusively by completing Section 2 of the online Part 2 Form, as further explained in Article VII. The executed Pre-Bid Letter of Credit must be sent to the Independent Evaluator at the address provided in the Part 2 Form.

### **V.3. RFP Bidders Relying on the Financial Standing of an RFP Guarantor**

V.3.1. The requirements of this Section V.3 apply only to RFP Bidders relying on the financial standing of an RFP Guarantor; other RFP Bidders are not subject to the requirements of this Section V.3.

V.3.2. Intent to Provide a Guaranty. The requirements of this paragraph only apply to RFP Bidders that are not Default Suppliers.

- Such RFP Bidder must provide in its Part 2 Proposal a statement from a representative of the RFP Guarantor acknowledging that the RFP Guarantor: (i) has been asked to provide a financial guaranty on behalf of the RFP Bidder should the RFP Bidder become a Default Supplier pursuant to its response under this RFP for procuring supply under the terms of the Uniform SMA; (ii) has a senior unsecured debt rating that meets the Minimum Rating as defined in the Uniform SMA; and (iii) would consider providing a financial guaranty on behalf of the RFP Bidder should there be no material change in affairs for at least the Indicative Amount. This RFP Guarantor may add that this statement should not and cannot be taken as an indication of financing commitment of any kind whatsoever, or an absolute commitment to provide a financial guaranty.
- The Indicative Amount must meet or exceed the sum of: (i) \$600,000 times the number of tranches bid on products for the RES and SC Classes for full requirements on a fixed-price basis; and (ii) \$300,000 times the number of tranches bid for the CCI Class for full requirements on a spot-price basis.

- The individual signing the intent to provide a guaranty must be a representative of the RFP Guarantor authorized to undertake contracts (including the Guaranty) and bind that RFP Guarantor.

The RFP Bidder provides this statement by completing the Guaranty Intent Insert prepared for this purpose and available on the Proposal submission website. The RFP Bidder provides the Guaranty Intent Insert by upload to the online Part 2 Form.

V.3.3. Information to Prepare the Guaranty. This paragraph applies to RFP Bidders whether or not they are previously eligible.

- The RFP Bidder is asked: (i) to specify the governing laws under which the RFP Guarantor is organized; (ii) to provide the name and title of the signatory to the guaranty as well as contact information for an individual who will receive notice under the guaranty; and (iii) to make elections to incorporate any or all of the approved modifications to the Standard Guaranty.
- An RFP Bidder that is a Default Supplier with a Guaranty in force may indicate that all information regarding the guaranty remains current and that the RFP Bidder does not wish to modify or supplement any of the elections regarding approved modifications to the Standard Guaranty.
- If an RFP Bidder that is not a Default Supplier with a Guaranty in force fails to submit information required for preparation of the Guaranty with the Part 1 Proposal, the Officer of the RFP Bidder must acknowledge that, if the Independent Evaluator notifies the RFP Bidder that the Independent Evaluator is identifying one or more of the RFP Bidder's Bids to the Commission as winning Bids, the RFP Bidder must provide all required information by 12 PM (noon) EPT on the day after such notification is received.

The RFP Bidder either provides information needed to prepare the guaranty for execution by completing the Guaranty Insert prepared for this purpose or the RFP Bidder provides an acknowledgement from the Officer of the RFP Bidder that such information will be required if one

or more of the RFP Bidder's Bids to the Commission as winning Bids by completing the Delay (Guaranty) Insert prepared for this purpose.

V.3.4. Enforceability Opinion for an Alternate Guaranty. The requirements of this Paragraph only apply to RFP Bidders that have obtained approval from PECO to use an alternate guaranty form under the Alternate Guaranty Process and that are not previously eligible. The Alternate Guaranty Process allows a supplier unable to use the Standard Guaranty provided as Appendix G to the Uniform SMA to submit for consideration by PECO the guaranty that the supplier uses in its normal course of business. Such a guaranty is called an "alternate guaranty form" and the process by which suppliers may obtain approval to use an alternate guaranty is described in Appendix 2. Such RFP Bidder must provide, with its Part 2 Proposal, an executed enforceability opinion for its approved alternate guaranty form on the letterhead of a law firm of national standing by upload to the online Part 2 Form.

V.3.5. All information required by this Section V.1 must be provided exclusively by completing Section 3 of the online Part 2 Form and the Inserts prepared for this purpose, as further explained in Article VII. Inserts must be submitted by upload to the online Part 1 Form. In case of technical difficulties, documents or Inserts may be sent by email to the Independent Evaluator at [PECOProcurement@nera.com](mailto:PECOProcurement@nera.com).

#### **V.4. RFP Bidders Relying on the Financial Standing of an RFP Principal**

V.4.1. The requirements of this Section V.4 apply only to RFP Bidders relying on the financial standing of an RFP Principal; other RFP Bidders are not subject to the requirements of this Section V.3.

V.4.2. Officers' Certificate. Whether or not the RFP Bidder is previously eligible, an RFP Bidder submitting a Proposal under an Agency Agreement must submit an Officers' Certificate substantially in the form of Appendix 6 to these RFP Rules. The Officers' Certificate must be provided by upload to the online Part 2 Form.

- The Officers' Certificate must be signed by an officer of each Principal.
- The Officers' Certificate states that: (i) the copy of the Agency Agreement submitted with the Part 1 Proposal is a true and complete copy of the Agency Agreement as currently in effect;

(ii) the Agency Agreement is in full force and effect and shall remain in full force and effect for a period extending to six (6) business days following the Bid Date; (iii) there are no proceedings pending for the amendment or termination of the Agency Agreement; (iv) each individual who has executed the Officers' Certificate and the Agency Agreement is (or was at the time of the execution of such documents) authorized to execute and deliver such documents on behalf of the Principal(s); and (v) the Officer of the RFP Bidder is authorized to execute the Uniform SMA as well as any Transaction Confirmation pursuant to the Uniform SMA on behalf of the Principal(s).

- An Officers' Certificate submitted by a previously eligible RFP Bidder and that was previously acceptable to PECO will remain acceptable to PECO unless there has been a change in the circumstances of the RFP Bidder submitting a Proposal under an Agency Agreement.

The RFP Bidder submits the document by upload to the online Part 2 Form.

- V.4.3. Signatory to the Uniform SMA. If an RFP Bidder submitting a Proposal under an Agency Agreement and the Principal does not authorize the RFP Bidder to sign the Uniform SMA or to execute a Transaction Confirmation, such RFP Bidder must name a representative of the Principal who will be authorized to sign the Uniform SMA and all necessary exhibits should such RFP Bidder have winning Bids that are approved by the Commission as required by Section VII.3. The RFP Bidder must provide contact information for this individual (address, phone number, and email address). If such RFP Bidder is not previously eligible, the RFP Bidder provides the information in the online Part 2 Form. If such RFP Bidder is previously eligible, the RFP Bidder either: (i) must confirm that the representative of the Principal remains authorized to sign the Uniform SMA (if applicable because the RFP Bidder is not a Default Supplier) and any Transaction Confirmation and that the previously submitted contact information remains valid in the online Part 2 Form; or: (ii) must update this information in the online Part 2 Form.
- V.4.4. An RFP Bidder that relies on the financial standing of a Principal that is a Foreign Entity must also comply with requirements detailed in Paragraph V.5.4.
- V.4.5. All information required by this Section V.1 must be provided exclusively by completing Section 4 of the online Part 2 Form and the Inserts prepared for this purpose, as further explained in Article

VII. Inserts must be submitted by upload to the online Part 1 Form. In case of technical difficulties, documents or Inserts may be sent by email to the Independent Evaluator at [PECOProcurement@nera.com](mailto:PECOProcurement@nera.com).

## **V.5. Foreign RFP Bidders and Foreign Entities**

V.5.1. The requirements of this Section V.5 apply only to Foreign RFP Bidders that seek to be granted unsecured credit under the terms of the Uniform SMA or to RFP Bidders that rely on the financial standing of a Foreign Entity (either an RFP Guarantor or a Principal). Other RFP Bidders are not subject to the requirements of this Section V.5. An RFP Bidder fulfills the requirements by completing the P2 Foreign Entity Insert prepared for this purpose and available on the Proposal submission website. The RFP Bidder provides the P2 Foreign Entity Insert by upload to the online Part 2 Form.

V.5.2. Required Documents for Foreign RFP Bidders. A Foreign RFP Bidder receives from the Independent Evaluator upon successfully completing the Part 1 Proposal a provisional creditworthiness assessment that presumes the receipt of the following fully executed additional documents: (i) a legal opinion of outside counsel qualified to practice in the foreign jurisdiction in which the Foreign RFP Bidder is incorporated or otherwise formed that the Uniform SMA is, or upon the completion of execution formalities will become, the binding obligation of the Foreign RFP Bidder in the jurisdiction in which it has been incorporated or otherwise formed; and (ii) the sworn certificate of the corporate secretary (or similar officer) of such Foreign RFP Bidder that the person executing the Uniform SMA on behalf of the Foreign RFP Bidder has the authority to execute the Uniform SMA and that the governing board of such Foreign RFP Bidder has approved the execution of the Uniform SMA; and (iii) the sworn certificate of the corporate secretary (or similar officer) of such Foreign RFP Bidder that the Foreign RFP Bidder has been authorized by its governing board to enter into agreements of the same type as the Uniform SMA. The Independent Evaluator will make available to RFP Bidders a sample of the legal opinion of outside counsel that is sufficient for a Foreign Entity as Principal.

- If the Foreign RFP Bidder is not previously eligible, such RFP Bidder must submit these fully executed documents by upload to the online Part 2 Form in a form acceptable to PECO for the Independent Evaluator to confirm the creditworthiness assessment provided with the Part 1 Notification. If the Foreign RFP Bidder submits these fully executed documents in a form acceptable to PECO, the Independent Evaluator includes in the Part 2 Notification a confirmation of the creditworthiness assessment provided with the Part 1 Notification. Otherwise, the Independent Evaluator provides with the Part 2 Notification a revised creditworthiness assessment that states that the Foreign RFP Bidder is not granted unsecured credit.
- If the Foreign RFP Bidder is previously eligible and has previously submitted these additional documents in a form acceptable to PECO, such RFP Bidder either: (i) must confirm that these documents remain valid; or (ii) must update any document that failed to remain valid. The Independent Evaluator confirms the creditworthiness assessment in the Part 2 Notification if all required documents are submitted and are acceptable to PECO. Otherwise, the Independent Evaluator provides with the Part 2 Notification a revised creditworthiness assessment that states that the Foreign RFP Bidder is not granted unsecured credit.

V.5.3. Required Documents for RFP Bidders with a Foreign Entity as RFP Guarantor. An RFP Bidder that relies on the financial standing of a Foreign Entity as RFP Guarantor receives, with its Part 1 Notification, a provisional creditworthiness assessment for its RFP Guarantor that presumes the receipt of the following fully executed additional documents in a form acceptable to PECO: (i) a legal opinion of outside counsel qualified to practice in the foreign jurisdiction in which the RFP Guarantor is incorporated or otherwise formed that the guaranty pursuant to the Uniform SMA is, or upon the completion of execution formalities will become, the binding obligation of the RFP Guarantor in the jurisdiction in which it has been incorporated or otherwise formed; and (ii) the sworn certificate of the corporate secretary (or similar officer) of such RFP Guarantor that the person executing the guaranty pursuant to the Uniform SMA on behalf of the RFP Guarantor has the authority to execute the guaranty pursuant to the Uniform SMA and that the governing board of such RFP Guarantor has approved the execution of the guaranty pursuant to the Uniform SMA; and

(iii) the sworn certificate of the corporate secretary (or similar officer) of such RFP Guarantor that the RFP Guarantor has been authorized by its governing board to enter into agreements of the same type as the guaranty pursuant to the Uniform SMA. The Independent Evaluator will make available to RFP Bidders a sample of the legal opinion of outside counsel that is sufficient for a Foreign Entity as Principal.

- If such RFP Bidder is not previously eligible, such RFP Bidder must submit these fully executed documents by upload to the online Part 2 Form in a form acceptable to PECO for the Independent Evaluator to confirm the creditworthiness assessment provided with the Part 1 Notification. If the RFP Bidder submits these fully executed documents and these documents are acceptable to PECO, the Independent Evaluator includes in the Part 2 Notification a confirmation of the creditworthiness assessment provided with the Part 1 Notification. If the RFP Bidder does not submit these documents, or if these documents are not acceptable to PECO, the Independent Evaluator provides with the Part 2 Notification a revised creditworthiness assessment that states that the Foreign Entity as RFP Guarantor is not granted unsecured credit. The RFP Bidder may not rely on the financial standing of the RFP Guarantor. Any guaranty submitted in the Part 2 Proposal will be removed from consideration and the Independent Evaluator may request additional information regarding the RFP Bidder under Section IV.2.
- If such RFP Bidder is previously eligible and has submitted these additional documents in a form acceptable to PECO, such RFP Bidder either: (i) must confirm that these documents remain valid; or (ii) must update any document that failed to remain valid. The Independent Evaluator confirms the creditworthiness assessment provided with the Part 1 Notification if the RFP Bidder all required documents are submitted and are acceptable to PECO. Otherwise, the Independent Evaluator provides with the Part 2 Notification a revised creditworthiness assessment that states that the RFP Guarantor is not granted unsecured credit. The RFP Bidder may not rely on the financial standing of the RFP Guarantor. Any guaranty submitted with the Part 2 Proposal will be removed from consideration and the



Independent Evaluator may request additional information regarding the RFP Bidder under Section IV.2.

V.5.4. Required Documents for RFP Bidders with a Foreign Entity as Principal. An RFP Bidder submitting a Proposal under an Agency Agreement with a Foreign Entity as Principal receives, with its Part 1 Notification, a provisional creditworthiness assessment that presumes the receipt of the following documents fully executed and acceptable to PECO: (i) a legal opinion of outside counsel qualified to practice in the foreign jurisdiction in which the Principal is incorporated or otherwise formed that the Uniform SMA is, or upon the completion of execution formalities will become, the binding obligation of the Principal in the jurisdiction in which it has been incorporated or otherwise formed; and (ii) the sworn certificate of the corporate secretary (or similar officer) of such Principal that the Principal has been authorized by its governing board to enter into agreements of the same type as the Uniform SMA. The Independent Evaluator will make available to RFP Bidders a sample of the legal opinion of outside counsel that is sufficient for a Foreign Entity as Principal.

- If such RFP Bidder is not previously eligible, such RFP Bidder must submit these fully executed documents by upload to the online Part 2 Form in a form acceptable to PECO for the Independent Evaluator to confirm the creditworthiness assessment provided with the Part 1 Notification. If the RFP Bidder submits these fully executed documents and these documents are acceptable to PECO, the Independent Evaluator includes in the Part 2 Notification a confirmation of the creditworthiness assessment provided with the Part 1 Notification. If the RFP Bidder does not submit these documents, or if these documents are not acceptable to PECO, the Independent Evaluator provides with the Part 2 Notification a revised creditworthiness assessment that states that the RFP Bidder and the Foreign Entity as Principal are not granted unsecured credit.
- If such RFP Bidder is previously eligible, such RFP Bidder either: (i) must confirm that these documents remain valid; or (ii) must update any document that failed to remain valid. The Independent Evaluator confirms the creditworthiness assessment provided with the Part 1 Notification if the RFP Bidder all required documents are submitted and are acceptable to PECO. Otherwise, the Independent Evaluator provides with the Part 2 Notification a revised

creditworthiness assessment that states that the RFP Bidder and the Foreign Entity as Principal are not granted unsecured credit.

V.5.5. The information required by this Section V.5 must be provided exclusively by completing Section 5 of the online Part 2 Form, as further explained in Article VII.

## **ARTICLE VI. Bid Submission**

- VI.1.1. The Independent Evaluator prepares an electronic Bid Form for each RFP Bidder qualified pursuant to a successful Part 1 Proposal. If the RFP Bidder cannot bid on all tranches available of a product because of the Load Cap for the Class to which such product belongs and because of tranches previously won by the RFP Bidder, the Bid Form reflects that fact. The Independent Evaluator sends at the same time instructions for completion of the Bid Form, for the optional encryption of the Bid Form, for electronic transfer of the completed Bid Form to the Independent Evaluator, for an alternate submission method for Bids in case of technical difficulties with the electronic transfer, as well as information used for authenticating the Bids, including the RFP Bidder's unique username, password, and security codes. The Independent Evaluator transmits these materials, the "Part 1 Materials", within two (2) business days of the Part 1 Notification Date, by secure file transfer. The Independent Evaluator requires a confirmation of receipt of these materials by email.
- VI.1.2. The exclusive method for submitting an RFP Bidder's Bids is the Bid Form. An RFP Bidder must fill out all required information on the Bid Form according to the instructions provided by the Independent Evaluator. An RFP Bidder may, but is not required to, encrypt its Bid Form. Encryption provides an additional layer of protection for the confidentiality of the RFP Bidder's data. An RFP Bidder must submit the Bid Form to the Independent Evaluator through a secure file transfer system according to the instructions provided by the Independent Evaluator. An RFP Bidder must fill out contact information on its Bid Form and the Independent Evaluator will use that information to confirm receipt of the Bids. All instructions noted in this Paragraph are included in the Part 1 Materials.
- VI.1.3. In case of technical difficulties while using the secure file transfer system, the Independent Evaluator will instruct the RFP Bidder to print the Bid Form and fax it to the Independent Evaluator. If the RFP Bidder does not have immediate fax capabilities, the Independent Evaluator will accept an email submission; however, the Independent Evaluator will recommend that the Bid Form in this case be encrypted and the Independent Evaluator will note for the RFP Bidder that such transmission may not be secure. An RFP Bidder that is not able to use the secure file transfer

system must advise the Independent Evaluator of that fact by phone and must at that time provide authenticating information. The Independent Evaluator will provide additional instructions for such a contingency that will be included with the Part 1 Materials.

- VI.1.4. All Bid Forms must be received between 10 AM and 12 PM (noon) on the Bid Date. No late Bid Forms will be accepted regardless of the method used by the RFP Bidder to submit its Bid Form.
- VI.1.5. A Bid for a tranche for any product is a price in U.S. Dollars per MWh, in the format \$xx.xx or \$xxx.xx, rounded to the nearest cent. The number of tranches bid on a product is the number of tranches of that product for which a Bid is provided.
- VI.1.6. A Bid that is not expressed in dollars per MWh will automatically be rejected. A Bid that has more than two (2) decimals will be automatically rounded to the nearest cent.
- VI.1.7. The RFP Bidder may not bid on less than a full tranche for a product. The RFP Bidder may not bid on fractions, portions, or parts of tranches.
- VI.1.8. The RFP Bidder may not submit any additional instructions, contingencies, or conditions on its Bids. Any such additional instructions, contingencies, or conditions will be ignored.
- VI.1.9. An RFP Bidder may not submit Bids that exceed the Load Caps and the Bid Form will include guidance for the RFP Bidder so that the RFP Bidder submits Bids that conform with the Load Caps. The Load Caps are described in Paragraph I.2.11.
- VI.1.10. The number of tranches bid for an RFP Bidder may not exceed the number of tranches supported by the Pre-Bid Letter of Credit. The amount of the Pre-Bid Letter of Credit is described in Paragraph V.2.1. The procedure used by the Independent Evaluator to modify the Bid Form is described in Paragraph VII.2.10.
- VI.1.11. Bids are evaluated on a price-only basis, in accordance with the process described in Section VII.2.

## **ARTICLE VII. Process**

### **VII.1. Part 1 and Part 2 Proposals: Submission and Processing**

- VII.1.1. The Independent Evaluator, for the purposes of this RFP, transmits all communications to the “Bidder Team” consisting of the Representative of the RFP Bidder and any Nominees. The Representative or the Officer of the RFP Bidder may designate up to three (3) Nominees.
- VII.1.2. Any notification or written communication will be deemed received by the RFP Bidder at the time of delivery or transmission, provided that when delivery or transmission occurs after 6 PM on a business day or occurs on a day that is not a business day, receipt will be deemed to occur at 9 AM on the following business day.
- VII.1.3. The exclusive method of responding to the qualification standards for the Part 1 Proposal listed in Article IV of these RFP Rules is the use of the online Part 1 Form. RFP Bidders that did not qualify in a previous solicitation under DSP IV must use the Standard Part 1 Form to respond to the qualification standards described in Article IV. Previously qualified RFP Bidders may participate in an abbreviated Part 1 Proposal process by using the Short Part 1 Form. The generic term “Part 1 Form” refers either to the Standard Part 1 Form or to the Short Part 1 Form. Responses to the qualification standards of Article IV that do not use the online Part 1 Form will not be considered and the Part 1 Proposal will be considered deficient.
- VII.1.4. An RFP Bidder must provide contact information for the RFP Bidder, name an Officer of the RFP Bidder who designates a Representative of the RFP Bidder and make general representations as required by Section IV.1, exclusively by completing Section 1 of the online Part 1 Form. An RFP Bidder must show compliance with the financial requirements of Section IV.2 exclusively by completing Section 2 of the online Part 1 Form and by providing all documents supporting the financial information and credit information as requested in that Section of the Part 1 Form. The RFP Bidder is asked to provide all information to prepare the Uniform SMA, as required by Section IV.3 exclusively by completing Section 3 of the online Part 1 Form. The RFP Bidder must show that it has all regulatory authorizations necessary for it to legally perform its obligations under the

Uniform SMA and the Transaction Confirmations as required by Section IV.4, exclusively by completing Section 4 of the online Part 1 Form. A Foreign RFP Bidder that seeks to be granted unsecured credit under the terms of the Uniform SMA, or an RFP Bidder relying on the financial standing of a Foreign Entity, either an RFP Guarantor or a Principal, must provide any additional information required by Section IV.5, exclusively by completing Section 5 of the Part 1 Form.

- VII.1.5. The Part 1 Proposal for an RFP Bidder includes the completed Part 1 Form as well Inserts to the Part 1 Form available as separate Word Forms on the Proposal submission website or from the Independent Evaluator. Documents (supporting documents, draft Letter of Credit or draft Standard Guaranty, and Inserts) may be uploaded to the Proposal submission website or sent to the Independent Evaluator by email at [PECOProcurement@nera.com](mailto:PECOProcurement@nera.com). Responses to the qualification standards of Article IV that do not use the online Part 1 Form and the Inserts prepared for this purpose will not be considered and the part 1 Proposal will be considered deficient. No late Part 1 Proposals will be accepted under any circumstances.
- VII.1.6. The Independent Evaluator considers and processes the Part 1 Proposals during the Part 1 Window. When a Part 1 Proposal is received, the Independent Evaluator sends an acknowledgment to the RFP Bidder by email. The Independent Evaluator only processes Part 1 Proposals during the Part 1 Window and, if the Part 1 Proposal is received before the Part 1 Window opens, the Independent Evaluator confirms receipt no later than on the first day of the Part 1 Window.
- VII.1.7. If the Part 1 Proposal is received before 12 PM (noon) on any business day during the Part 1 Window, the Independent Evaluator sends the acknowledgment confirming receipt on the day the Part 1 Proposal is received with the results of an initial review. The initial review states either that the Part 1 Proposal is complete and is being considered, or the initial review lists items of the Part 1 Proposal that are deficient or require clarification. If a Part 1 Proposal is received after 12 PM (noon) on any business day during the Part 1 Window prior to the Part 1 Date, the Independent Evaluator sends the acknowledgment along with the initial review by 12 PM (noon) of the next business day. The Independent Evaluator sends such acknowledgments to the RFP Bidder by email.

- VII.1.8. An RFP Bidder that submits a Draft Pre-Bid Letter of Credit will receive a review of any proposed modifications within two (2) business days. The Independent Evaluator sends such review by email. The RFP Bidder can only submit one (1) Draft Pre-Bid Letter of Credit. Any review communicated to the RFP Bidder of the Draft Pre-Bid Letter of Credit is final. The RFP Bidder cannot submit a subsequent request for changes on the basis of this review. All modifications accepted to the Standard Pre-Bid Letter of Credit for the benefit of a single RFP Bidder will be made available to all RFP Bidders on an optional basis. All such modifications will be posted in a single document on the RFP website that will be updated daily during the Part 1 Window. By 12 PM (noon) on the day the Part 2 Window opens, the final document containing all accepted modifications will be posted.
- VII.1.9. An RFP Bidder that submits a Draft Post-Bid Letter of Credit will receive a review of any proposed modifications within seven (7) business days. The Independent Evaluator sends such review by email. The RFP Bidder can only submit one (1) Draft Post-Bid Letter of Credit. Any review communicated to the RFP Bidder of the Draft Post-Bid Letter of Credit is final. The RFP Bidder cannot submit a subsequent request for changes on the basis of this review. All modifications accepted to the Standard Post-Bid Letter of Credit for the benefit of a single RFP Bidder will be made available to all RFP Bidders on an optional basis. All such modifications will be posted in a single document on the RFP website that will be posted no later than 6 PM on the Part 2 Date.
- VII.1.10. An RFP Bidder that submits a Draft Standard Guaranty will receive a review of any proposed modifications within two (2) business days. The Independent Evaluator sends such review by email. The RFP Bidder can only submit one (1) Draft Standard Guaranty. Any review communicated to the RFP Bidder of the Draft Standard Guaranty is final. The RFP Bidder cannot submit a subsequent request for changes on the basis of this review. All modifications accepted to the Standard Guaranty for the benefit of a single RFP Bidder will be made available to all RFP Bidders on an optional basis. All such modifications will be posted in a single document on the RFP website that will be updated daily during the Part 1 Window. By 12 PM (noon) on the day the Part 2 Window opens, the final document containing all accepted modifications will be posted.

- VII.1.11. An RFP Bidder submitting a Proposal under an Agency Agreement that submits a Draft Officers' Certificate will receive an evaluation of this document by the Part 1 Notification Date. The Independent Evaluator sends such review by email. Any evaluation communicated to the RFP Bidder of the Draft Officers' Certificate is final. The RFP Bidder cannot submit a subsequent request for changes on the basis of this evaluation.
- VII.1.12. A Foreign RFP Bidder that submits a draft of any of the documents described in Paragraph IV.5.2 will receive an evaluation of these documents by the Part 1 Notification Date. The Independent Evaluator sends such review by email. Any evaluation communicated to the RFP Bidder of such draft documents is final. The RFP Bidder cannot submit a subsequent request for changes on the basis of this evaluation.
- VII.1.13. An RFP Bidder that relies on the financial standing of a Foreign Entity as RFP Guarantor and that submits a draft of any of the documents described in Paragraph IV.5.3 will receive an evaluation of these documents by the Part 1 Notification Date. The Independent Evaluator sends such review by email. Any evaluation communicated to the RFP Bidder of such draft documents is final. The RFP Bidder cannot submit a subsequent request for changes on the basis of this evaluation.
- VII.1.14. An RFP Bidder submitting a Proposal under an Agency Agreement that relies on the financial standing of a Foreign Entity as Principal and that submits a draft of any of the documents described in Paragraph IV.5.4 will receive an evaluation of these documents by the Part 1 Notification Date. The Independent Evaluator sends such review by email. Any evaluation communicated to the RFP Bidder of such draft documents is final. The RFP Bidder cannot submit a subsequent request for changes on the basis of this evaluation.
- VII.1.15. The RFP Bidder includes, in its Part 1 Proposal, a certification from the Officer of the RFP Bidder that the RFP Bidder is bidding independently and is not acting in concert with another RFP Bidder. The Independent Evaluator may request additional information to ascertain that the RFP Bidder is bidding independently of other RFP Bidders. An RFP Bidder that is not bidding independently of another RFP Bidder may fail to qualify.
- VII.1.16. If an RFP Bidder receives any notice from the Independent Evaluator that any item of the Part 1 Proposal is deficient or requires clarification, the RFP Bidder has until 12 PM (noon) on the Part 1



Date, or until 6 PM on the business day following the business day during which the Independent Evaluator transmits such notice, whichever comes later, to respond. If the RFP Bidder does not correct or adequately explain the deficiency within the time allowed, the Part 1 Proposal may be rejected. The Independent Evaluator sends such notice to the RFP Bidder by email.

VII.1.17. An RFP Bidder meets the qualification standards of this RFP if its Part 1 Proposal is received on or before 12 PM (noon) on the Part 1 Date, if its Part 1 Proposal is complete, and if its Part 1 Proposal fully complies with all requirements of Article IV.

VII.1.18. The Independent Evaluator informs each RFP Bidder of whether it has met all qualification standards of Article IV through a Part 1 Notification that the Independent Evaluators sends no later than 6 PM on the Part 1 Notification Date.

VII.1.19. If the RFP Bidder has a successful Part 1 Proposal, within two (2) business days of the Part 1 Notification Date, the Independent Evaluator transmits to the RFP Bidder a number of documents and instructions, called the Part 1 Materials. The Part 1 Materials include: (i) the Bid Form; (ii) instructions for filling out and optionally encrypting the Bid Form; (iii) instructions for the submission of the completed Bid Form from the RFP Bidder to the Independent Evaluator by secure file transfer system; (iv) instructions for an alternate method for submission of the Bids in case of technical difficulties with the secure file transfer system; (v) an invitation to a training session on the Bid submission process; and (vi) a username, a password, and security codes to be used for Bid submission uniquely by that RFP Bidder. The Part 1 Materials may also include other training materials or important notifications to RFP Bidders. The Independent Evaluator transmits the Part 1 Materials by secure file transfer. However, if special circumstances warrant, the Independent Evaluator may transmit by email a particular document needed for participation in a solicitation upon agreement by the RFP Bidder.

VII.1.20. The Independent Evaluator requires an acknowledgment from the RFP Bidder that the RFP Bidder has received intact the information necessary to submit Bids and that no one but authorized personnel of the RFP Bidder has had access to this information. The RFP Bidder may make this acknowledgment by email. The RFP Bidder's Bids are only evaluated if this acknowledgment is received.

VII.1.21. The exclusive method of responding to the requirements for Part 2 Proposals listed in Article V of these RFP Rules is the use of the online Part 2 Form. Responses to the requirements of Article V that do not use the online Part 2 Form will not be considered and the Part 2 Proposal will be considered deficient.

VII.1.22. An RFP Bidder must confirm its contact information and make any general representations required by Section V.1 exclusively by completing Section 1 of the online Part 2 Form. An RFP Bidder must submit the Pre-Bid Letter of Credit as required by Section V.2 and as instructed in Section 2 of the online Part 2 Form. An RFP Bidder relying on the financial standing of an RFP Guarantor will provide intent to provide a guaranty from its RFP Guarantor and an RFP Bidder submitting a Proposal under an Agency Agreement must submit additional documents as required by Section V.3 exclusively by completing Section 3 of the online Part 2 Form. A Foreign RFP Bidder that seeks to be granted unsecured credit under the terms of the Uniform SMA, or an RFP Bidder that seeks to rely on the financial standing of a Foreign Entity (either an RFP Guarantor or a Principal), must submit any additional documents as required by Section V.4 and as instructed by Section 4 of the online Part 2 Form.

VII.1.23. The Part 2 Proposal consists of the completed online Part 2 Form, the Pre-Bid Letter of Credit, as well as Inserts to the Part 1 Form available as separate Word Forms on the Proposal submission website or from the Independent Evaluator. Documents may be uploaded to the Proposal submission website or sent to the Independent Evaluator by email at [PECOProcurement@nera.com](mailto:PECOProcurement@nera.com).

In particular:

- For an RFP Bidder relying on the financial standing of an RFP Guarantor and that is not a Default Supplier, the Part 2 Proposal also includes an acknowledgment from a representative of the RFP Guarantor.
- For an RFP Bidder submitting a Proposal under an Agency Agreement, the Part 2 Proposal also includes an executed Officers' Certificate.
- For an RFP Bidder that: (i) is submitting a Proposal under an Agency Agreement and relying on the financial standing of a Foreign Entity as Principal; or (ii) is a Foreign RFP Bidder; or (iii) relies on the financial standing of a Foreign Entity as RFP Guarantor; the Part 2 proposal

also includes any documents required by Section V.4 as a condition of being granted unsecured credit. These documents may include an executed legal opinion of outside counsel and a sworn certificate of the corporate secretary.

- VII.1.24. The Independent Evaluator considers and processes the Part 2 Proposals during the Part 2 Window. No late Part 2 Proposals will be accepted under any circumstances. No late Part 2 Proposals will be accepted under any circumstances. RFP Bidders also have the option to submit the certifications required by the Part 2 Form during the Part 1 Window for early processing. When a Part 2 Proposal is received, the Independent Evaluator sends an acknowledgment to the RFP Bidder by email. The Independent Evaluator confirms receipt as long as the Part 2 Proposal is received after the opening of the Part 1 Window. However, Part 2 Proposals are only processed during the Part 2 Window (with the exception of certifications, which may be processed during the Part 1 Window).
- VII.1.25. If the Part 2 Proposal is received before 12 PM (noon) on any business day after the opening of the Part 1 Window, the Independent Evaluator sends the acknowledgment confirming receipt on the day the Part 2 Proposal is received with the results of an initial review. The initial review states either that the Part 2 Proposal is complete and is being considered, or the initial review lists items of the Part 2 Proposal that are deficient or require clarification. If a Part 2 Proposal is received after 12 PM (noon) on any business day during the Part 2 Window prior to the Part 2 Date, the Independent Evaluator sends the acknowledgment along with the initial review by 12 PM (noon) of the next business day. The Independent Evaluator sends such acknowledgments by email.
- VII.1.26. An RFP Bidder's Part 2 Proposal is automatically deficient if the Pre-Bid Letter of Credit proposes or includes modifications to the Standard Pre-Bid Letter of Credit included as Appendix 9 of these RFP Rules other than those accepted modifications posted in a single document on the RFP website. If an RFP Bidder receives notice from the Independent Evaluator that its Pre-Bid Letter of Credit is deficient, the RFP Bidder has until 12 PM (noon) on the Part 2 Date, or until 6 PM on the second business day following the business day during which such a notice is sent to the RFP Bidder, whichever comes later, to respond. The Independent Evaluator sends such notices by email.

- VII.1.27. The amount of the Pre-Bid Letter of Credit must be at least \$250,000 per tranche bid on products for full requirements service on a fixed-price basis, plus \$125,000 per tranche bid on the CCI product for full requirements service on a spot-price basis. The Indicative Amount for RFP Bidders that rely on the financial standing of an RFP Guarantor and that do not hold a current Uniform SMA with PECO must be equal or exceed \$600,000 per tranche bid on products for full requirements service on a fixed-price basis, plus \$300,000 per tranche bid on a CCI product for full requirements service on a spot-price basis. An RFP Bidder's Part 2 Proposal is automatically deficient if the amount of the Pre-Bid Letter of Credit is not consistent with the Indicative Amount of the Guaranty provided in the Part 2 Form. If an RFP Bidder receives notice from the Independent Evaluator that its Part 2 Proposal is deficient in this regard, the RFP Bidder has until 12 PM (noon) on the Part 2 Date, or until 6 PM on the second business day following the business day during which such a notice is sent to the RFP Bidder, whichever comes later, to respond. The Independent Evaluator provides such notice to the RFP Bidder by email.
- VII.1.28. For an RFP Bidder that received approval from PECO to use an alternate guaranty form through the Alternate Guaranty Process, PECO and the Independent Evaluator will determine whether the enforceability opinion required under Paragraph V.3.3 is acceptable to PECO, without any liability or obligation to the RFP Bidder or the RFP Guarantor. If the document is not acceptable to PECO and the RFP Bidder receives notice from the Independent Evaluator that its Part 2 Proposal is deficient in this regard, the RFP Bidder has until 12 PM (noon) on the Part 2 Date, or until 6 PM on the second business day following the business day during which such a notice is sent to the RFP Bidder, whichever comes later, to respond. If the document remains insufficient, the RFP Bidder's Part 2 Proposal may be rejected. The Independent Evaluator provides such notice to the RFP Bidder by email.
- VII.1.29. For an RFP Bidder submitting a Proposal under an Agency Agreement that provides the documents required under Section V.4, PECO and the Independent Evaluator will determine whether the documents provided are sufficient, without any liability or obligation to the RFP Bidder or its Principal(s). If the documents are insufficient and the RFP Bidder receives notice from the Independent Evaluator that its Part 2 Proposal is deficient in this regard, the RFP Bidder has until

12 PM (noon) on the Part 2 Date, or until 6 PM on the second business day following the business day during which such a notice is sent to the RFP Bidder, whichever comes later, to respond. If the documents remain insufficient, the RFP Bidder's Part 2 Proposal may be rejected. The Independent Evaluator provides such notice to the RFP Bidder by email.

VII.1.30. For a Foreign RFP Bidder that submits the documents required under Paragraph V.5.2, PECO and the Independent Evaluator will determine whether the documents provided are acceptable to PECO, without any liability or obligation to the Foreign RFP Bidder. If the documents are not acceptable to PECO and the RFP Bidder receives notice from the Independent Evaluator that its Part 2 Proposal is deficient in this regard, the RFP Bidder has until 12 PM (noon) on the Part 2 Date, or until 6 PM on the second business day following the business day during which such a notice is sent to the RFP Bidder, whichever comes later, to respond. If the deficiency remains, the Independent Evaluator provides with the Part 2 Notification a revised creditworthiness assessment that states that the Foreign RFP Bidder is not granted unsecured credit. If the Foreign RFP Bidder had submitted these documents with its Part 1 Proposal for evaluation and if the Foreign RFP Bidder conforms the documents submitted with the Part 2 Proposal to the evaluation provided with its Part 1 Notification, then these documents will automatically be considered acceptable to PECO. The Independent Evaluator provides such notices to the RFP Bidder by email.

VII.1.31. For an RFP Bidder relying on the financial standing of a Foreign Entity as RFP Guarantor and that submits the documents required under Paragraph V.5.3, PECO and the Independent Evaluator will determine whether the documents provided are acceptable to PECO, without any liability or obligation to the RFP Bidder or the RFP Guarantor. If the documents are acceptable to PECO and the RFP Bidder receives notice from the Independent Evaluator that its Part 2 Proposal is deficient in this regard, the RFP Bidder has until 12 PM (noon) on the Part 2 Date, or until 6 PM on the second business day following the business day during which such a notice is sent to the RFP Bidder, whichever comes later, to respond. If the deficiency remains, the RFP Bidder the Independent Evaluator provides with the Part 2 Notification a revised creditworthiness assessment that states that the RFP Guarantor is not granted unsecured credit. The RFP Bidder may not rely on the financial standing of the RFP Guarantor and the Independent Evaluator may request additional

information regarding the RFP Bidder under Section IV.2. If the RFP Bidder had submitted these documents with its Part 1 Proposal for evaluation and if the RFP Bidder conforms the documents submitted with the Part 2 Proposal to the evaluation provided with its Part 1 Notification, then these documents will automatically be considered acceptable to PECO. The Independent Evaluator provides such notices to the RFP Bidder by email.

VII.1.32. For an RFP Bidder relying on a Foreign Entity as Principal that provides the documents required under Paragraph V.5.4, PECO and the Independent Evaluator will determine whether the documents provided are acceptable to PECO, without any liability or obligation to the RFP Bidder or its Principal(s). If the documents are not acceptable to PECO and the RFP Bidder receives notice from the Independent Evaluator that its Part 2 Proposal is deficient in this regard, the RFP Bidder has until 12 PM (noon) on the Part 2 Date, or until 6 PM on the second business day following the business day during which such a notice is sent to the RFP Bidder, whichever comes later, to respond. If the deficiency remains, the Independent Evaluator provides with the Part 2 Notification a revised creditworthiness assessment that states that the RFP Bidder and its Principal are not granted unsecured credit. If the RFP Bidder had submitted these documents with its Part 1 Proposal for evaluation and if the RFP Bidder conforms the documents submitted with the Part 2 Proposal to the evaluation provided with its Part 1 Notification, then these documents will automatically be considered acceptable to PECO. The Independent Evaluator provides such notices to the RFP Bidder by email.

VII.1.33. With the exceptions noted in the Paragraphs of this Section, if an RFP Bidder receives any notice from the Independent Evaluator that an item of the Part 2 Proposal is deficient or requires clarification, the RFP Bidder has until 12 PM (noon) on the Part 2 Date, or until 6 PM on the business day following the business day during which such a notice is sent to the RFP Bidder, whichever comes later, to respond. If the RFP Bidder does not correct or adequately explain the deficiency within the time allowed, the Part 2 Proposal may be rejected. The Independent Evaluator sends such notice to the RFP Bidder by email.

- VII.1.34. An RFP Bidder's Part 2 Proposal is successful if its Part 2 Proposal is received on or before 12 PM (noon) on the Part 2 Date, if its Part 2 Proposal is complete, and if its Part 2 Proposal fully complies with the requirements of Article V of these RFP Rules.
- VII.1.35. An RFP Bidder that submits a Part 2 Proposal will be notified whether it is eligible to submit Bids no later than 6 PM on the Part 2 Notification Date. The Independent Evaluator provides such notification to the RFP Bidder by email.

## **VII.2. Bids: Submission, Processing, and Evaluation**

- VII.2.1. An RFP Bidder must submit its Bids in accordance with the instructions provided in the Part 1 Materials and in accordance with the requirements of Article VI. An RFP Bidder's Bids must be received between 10 AM and 12 PM (noon) on the Bid Date. The requirements for Bid submission are the same for all RFP Bidders, regardless of whether they were previously eligible to submit Bids.
- VII.2.2. The Bid Form, as provided to each RFP Bidder with the Part 1 Notification, is the exclusive method for the submission of Bids. A sample of the Bid Form is provided for illustrative purposes as Appendix 10 of these RFP Rules. The Bid Form is prepared specifically for each RFP Bidder. The Bid Form must be filled out completely and transferred according to the instructions provided by the Independent Evaluator in the Part 1 Materials. The RFP Bidder may encrypt the Bid Form using the instructions provided by the Independent Evaluator. Bids on any Bid Form that is incompletely or inconsistently filled out will be considered deficient and will not be evaluated.
- VII.2.3. An RFP Bidder submits its Bids electronically, by transferring its Bid Form through a secure file transfer system. The RFP Bidder must use the username and the password provided by the Independent Evaluator to access the secure file transfer system. The Independent Evaluator supplies a security code that the RFP Bidder may use to encrypt the Bid Form.
- VII.2.4. An RFP Bidder that must resort to an alternate method for submitting its Bid Form by fax because of technical difficulties with the secure file transfer system must follow the instructions provided by the Independent Evaluator for this contingency. These instructions will include a representative of the RFP Bidder phoning the Independent Evaluator to advise the Independent Evaluator of the use

of an alternate method for the submission of the Bid Form and to provide authenticating information. The primary alternate submission method is fax; the Independent Evaluator will accept an email submission but the Independent Evaluator will recommend that the Bid Form in this case be encrypted and the Independent Evaluator will note for the RFP Bidder that such transmission may not be secure.

- VII.2.5. All Bid Forms must be received between 10 AM and 12 PM (noon) on the Bid Date. No late Bid Forms will be considered regardless of the method used by the RFP Bidder to submit its Bid Form.
- VII.2.6. If an RFP Bidder submits its Bid Form more than once between 10 AM and 12 PM (noon) on the Bid Date, the last Bid Form submitted in accordance with all requirements of the Bid Form and of Article VI automatically supersedes all previously submitted Bid Form(s).
- VII.2.7. The Independent Evaluator acknowledges receipt of the Bid Form with each RFP Bidder by telephone. The telephone number used is the telephone number provided on the Bid Form. If the Bid Form received by the Independent Evaluator is not encrypted by the RFP Bidder, the Independent Evaluator will require that the RFP Bidder provide the security code to the Independent Evaluator before the Bid Form is acknowledged and evaluated. The Independent Evaluator makes this acknowledgment within fifteen (15) minutes of receipt of the Bid Form. An RFP Bidder that does not receive an acknowledgment within fifteen (15) minutes of submitting its Bid Form should assume technical difficulties, should proceed to submitting its Bid Form by an alternate method, and should phone the Independent Evaluator immediately.
- VII.2.8. If the Bid Form received by the Independent Evaluator is incomplete or inconsistent with all requirements of the Bid Form and of Article VI, the Independent Evaluator will advise the RFP Bidder of that fact when confirming receipt of the Bid Form. The RFP Bidder may correct and resubmit the Bid Form as long as the Bid Form is received between 10 AM and 12 PM (noon) on the Bid Date. If the corrected Bid Form is not received between 10 AM and 12 PM (noon) on the Bid Date, the Bids on the Bid Form will not be evaluated.
- VII.2.9. It is the responsibility of the RFP Bidder to ensure that a completely and consistently filled out Bid Form is submitted between 10 AM and 12 PM (noon) on the Bid Date. The Independent Evaluator will hold a training session for RFP Bidders to practice the Bid submission process. RFP Bidders are



encouraged to participate to minimize the possibility of technical difficulties with the submission of their Bid Forms.

- VII.2.10. The Independent Evaluator will verify that the Pre-Bid Letter of Credit is in an amount sufficient to support the number of tranches bid by each RFP Bidder. If an RFP Bidder's Pre-Bid Letter of Credit is insufficient to support the number of tranches bid by the RFP Bidder, the Independent Evaluator will contact the RFP Bidder on a best efforts basis. The RFP Bidder may correct and resubmit the Bid Form as long as the Bid Form is received between 10 AM and 12 PM (noon) on the Bid Date. If the Independent Evaluator is not able to contact the RFP Bidder in time or if the RFP Bidder has not submitted a revised Bid Form between 10 AM and 12 PM (noon) on the Bid Date, the Independent Evaluator will modify the Bid Form. The Independent Evaluator will determine for such RFP Bidder the greatest number of whole tranches that its Pre-Bid Letter of Credit is sufficient to support. The Independent Evaluator will strike a Bid from a Bid Form for any tranche that is not supported by the Pre-Bid Letter of Credit. The Independent Evaluator will remove a Bid first from the product where there is most competition, as measured by the ratio of the number of tranches bid to the number of tranches needed. For that product, the Independent Evaluator will start with the tranche that has the highest Bid. If more than one RFP Bidder submitted Pre-Bid Letters of Credit that are insufficient to support the number of tranches bid by each such RFP Bidder, the Independent Evaluator will first modify the Bid Form from the RFP Bidder whose Bid Form is received last.
- VII.2.11. By submitting a Proposal in response to an RFP, each RFP Bidder is authorizing the Independent Evaluator to modify the RFP Bidder's Bid Form as specified Paragraph VII.2.10. Each RFP Bidder acknowledges and accepts that the methodology may result in removal of a Bid that would have been approved by the Commission or the retention of a Bid that was not approved by the Commission.
- VII.2.12. The Bids supported by adequate Pre-Bid Letters of Credit will be evaluated on a price-only basis. The Bids for each product will be ranked from lowest to highest price until all Bids are ranked or until the number of Bids that are ranked equals the number of tranches available for the product.

- VII.2.13. If two or more RFP Bidders submit Bids that are identical for a product, these Bids will be considered “Tied Bids” at that price. The Independent Evaluator will use the tie-breaking procedure described in the next Paragraph if: i) in total, more Bids must be ranked for a product than there are tranches available for that product; ii) the tie among two or more Tied Bids must be broken in order to determine the RFP Bidders that have submitted the lowest Bids on that product.
- VII.2.14. The tie-breaking procedure will award tranches in the following order: (1) to the RFP Bidder which, if awarded the tranche, would hold the fewest tranches for the product for any one month during the product term; (2) to the RFP Bidder which, if awarded the tranche, would hold the fewest tranches for the Class in question for any one month during the product term; and then (3) to the RFP Bidder which, if awarded the tranche, would hold the fewest tranches in aggregate for any one month during the product term. If a tie were to remain, it would be broken by random selection.
- VII.2.15. An RFP Bidder acting in concert with another RFP Bidder may be disqualified by the Independent Evaluator on behalf of the Company in its sole and exclusive discretion. The RFP Bidder will be considered to have made a material misrepresentation in its Part 2 Proposal and payment under the Pre-Bid Letter of Credit can be demanded by PECO.
- VII.2.16. For each product in this solicitation, a Default Supplier will be paid a supplier-specific price for each MWh of electric load served as specified in the Transaction Confirmation for that product. The supplier-specific price will be the average of approved Bids for that product.

### **VII.3. Post-Bid Process**

- VII.3.1. The winning RFP Bidders and PECO must execute the Uniform SMAs and Transaction Confirmations within three (3) days of acceptance of the results by the Commission.
- VII.3.2. PECO can collect on the Pre-Bid Letter of Credit if a winning RFP Bidder does not execute the Uniform SMA and all Transaction Confirmations, or if the winning RFP Bidder does not fulfill the creditworthiness requirements in the required timeframe.
- VII.3.3. The Independent Evaluator phones each RFP Bidder that has submitted Bids by 6 PM on the Bid Date and identifies the RFP Bidder’s Bids that are provided to the Commission as winning Bids. The Independent Evaluator also provides a notification to the RFP Bidder by email.

- VII.3.4. An RFP Bidder that: (i) is not a Default Supplier; and (ii) has Bids that are identified to the Commission as winning Bids; and (iii) did not provide the necessary information to prepare the Uniform SMA with the Part 1 Proposal, will receive a notification from the Independent Evaluator on the Bid Date. This notification will require that such RFP Bidder provide all information needed to prepare the Uniform SMA by 12 PM (noon) on the next day. The Independent Evaluator uses this information to prepare the Uniform SMA for each such RFP Bidder.
- VII.3.5. An RFP Bidder that: (i) relies on the financial standing of an RFP Guarantor; (ii) has Bids that are identified to the Commission as winning Bids; and (iii) did not provide the information necessary to prepare the guaranty with the Part 1 Proposal will receive a notification from the Independent Evaluator on the Bid Date. This notification will require that such RFP Bidder provide all information needed to prepare the guaranty by 12 PM (noon) on the next day. The Independent Evaluator uses this information to prepare the guaranty for each such RFP Bidder.
- VII.3.6. The Independent Evaluator presents the results of the solicitation to the Commission on the business day after the Bid Date in a confidential report. This confidential report will include the winning Bids identified during the evaluation. The Commission will have one (1) business day to consider the report of the Independent Evaluator and to approve or reject each of the winning Bids. If the Commission does not act within one (1) business day, the winning Bids are deemed to be approved.
- VII.3.7. On the day that the Commission approves some or all of the winning Bids, the Independent Evaluator notifies all RFP Bidders that have approved Bids. Such RFP Bidders are called Default Suppliers. When referring specifically to RFP Bidders that are not already Default Suppliers, the term New Default Suppliers will be used. When referring specifically to RFP Bidders that are already Default Suppliers, the term Existing Default Suppliers will be used.
- VII.3.8. On the day the Commission approves some or all of the winning Bids, the Independent Evaluator provides to PECO the name of each Default Supplier, the number of tranches won by each Default Supplier, and the Default Supplier's price for each product. The price for each such Default Supplier and for a given product is the average of the Default Supplier's approved Bids for that product in this solicitation.

VII.3.9. On the day the Commission approves some or all of the winning Bids, the Independent Evaluator sends to PECO by secure file transfer the Uniform SMA, including all Exhibits, for each New Default Supplier. On the same day, the Independent Evaluator sends to PECO by secure file transfer the guaranty for each New Default Supplier relying on the financial standing of an RFP Guarantor. The Independent Evaluator also sends to PECO by secure file transfer the most current contact information that the Independent Evaluator has for each Default Supplier.

VII.3.10. On the business day following the Commission approval of some or all of the winning Bids, PECO prepares one (1) Transaction Confirmation (Exhibit 1 of the Uniform SMA) for each product and Default Supplier. PECO partially executes two (2) originals of each Transaction Confirmation for each Default Supplier and each product. PECO also partially executes two (2) originals of the Uniform SMA with each New Default Supplier.

VII.3.11. By 12PM on the second business day following the Commission approval of some or all of the winning Bids, PECO sends:

- One (1) copy of the signature page of the Uniform SMA (page 75) and one (1) copy of the signature page of Exhibit 3, the PJM Declaration of Authority (page 9) by fax or other electronic means to each New Default Supplier;
- One (1) copy of the partially executed Transaction Confirmation by fax or other electronic means to each Default Supplier for each product for which the Default Supplier has won tranches; and
- The guaranty by secure file transfer for each New Default Supplier relying on the financial standing of an RFP Guarantor.

PECO also informs each Default Supplier of its specific creditworthiness requirements.

VII.3.12. By close of the second business day following the Commission approval of some or all of the winning Bids, PECO sends by overnight delivery service:

- The two (2) originals of the partially executed Uniform SMA, including all Exhibits, to each New Default Supplier; and
- Two (2) original partially executed Transaction Confirmations to each Default Supplier for each product for which such Default Supplier has approved Bids.

VII.3.13. By 2PM on the third business day following Commission approval of some or all of the winning Bids:

- Each New Default Supplier partially executes the two (2) originals of the Uniform SMA and the two (2) originals of Exhibit 3, the PJM Declaration of Authority and returns one (1) copy of these signature pages to PECO by fax or other electronic means;
- Each Default Supplier partially executes the two (2) originals of the Transaction Confirmations and returns one (1) copy of the signature page to PECO by fax or other electronic means; and
- Each New Default Supplier relying on the financial standing of an RFP Guarantor executes the guaranty sent by secure file transfer and returns one (1) copy of the signature page of the guaranty to PECO by fax or other electronic means.

VII.3.14. By close of the third business day following Commission approval of some or all of the winning Bids:

- Each New Default Supplier returns by overnight delivery service to PECO one (1) original of the Uniform SMA, including all Exhibits;
- Each Default Supplier returns by overnight delivery service to PECO one (1) original of the Transaction Confirmation; and
- Each Default Supplier complies with all instructions from PECO to fulfill the creditworthiness requirements under the Uniform SMA.

VII.3.15. Following receipt of originals by PECO:

- PECO and each New Default Supplier have one (1) fully executed original of the Uniform SMA and of Exhibit 3, the PJM Declaration of Authority, as well as all other Exhibits;
- PECO and each Default Supplier have one (1) fully executed original of a Transaction Confirmation for each product for which the Default Supplier has approved Bids;

VII.3.16. As provided in the Commission's directive dated October 12, 2010 (Docket No. M-2009-2082042), the Independent Evaluator will release, within fifteen (15) days of the close of the solicitation, the weighted average price and the percentage of load represented by each tranche for each product

procured through this RFP. The Independent Evaluator will issue an announcement on behalf of PECO with this information and the announcement will also be posted to the RFP website.

VII.3.17. Within fifteen (15) days of the full execution of the Uniform SMA, the Independent Evaluator provides to PECO a report on the solicitation. This report is based on the confidential report provided to the Commission, except that no losing bid information specific to a particular RFP Bidder is provided and that any information that an RFP Bidder may consider confidential or proprietary is also redacted.

VII.3.18. As provided in the PaPUC's directive dated October 12, 2010 (Docket No. M-2009-2082042), PECO will continue to provide a default service rate calculation model. The model shows the methodology for translating RFP results into default service rates. This calculation model is posted to the PECO website:

<https://www.peco.com/CustomerService/RatesandPricing/EnergyChoice/Pages/PricetoCompare.aspx>.

#### **VII.4. Personnel and Confidentiality**

VII.4.1. Any information provided by an RFP Bidder in its Part 1 Proposal is provided on a confidential basis to the Independent Evaluator and may be provided on a confidential basis to the Commission Staff. PECO representatives will review the information provided to fulfill the requirements of Section IV.2, Section IV.3, and Section IV.5 and will participate in the evaluation of the creditworthiness of each RFP Bidder.

VII.4.2. Any information provided by an RFP Bidder in its Part 2 Proposal is provided on a confidential basis to the Independent Evaluator, and may be provided on a confidential basis to the Commission Staff. PECO representatives will review the Pre-Bid Letter of Credit with the name of the RFP Bidder and the amount redacted and will participate in the evaluation of this Pre-Bid Letter of Credit. PECO representatives will also review the documents provided to fulfill the requirements of Section V.4 and Section V.5.

VII.4.3. The Independent Evaluator and representatives from PECO involved in the evaluation of Proposals will consider all data and information provided by RFP Bidders in response to this RFP to be

confidential and will attempt to limit its disclosure to the public in accordance with the provisions of this Section. PECO will also take reasonable action to ensure that its employees, representatives and agents authorized to consider and evaluate all Proposals protect the confidentiality of such data and information. Each representative of the Independent Evaluator and PECO that has access to any portion of the Proposals is required to sign a Confidentiality Statement in the form of Appendix 12 to these RFP Rules prior to evaluation of any portion of the Proposals. The list of all signatories is available to an RFP Bidder upon request.

VII.4.4. However, absolute protection from public disclosure of the RFP Bidders' data and information filed in response to this RFP cannot be provided and is not intended. By submitting a Proposal in response to this RFP, each RFP Bidder acknowledges and agrees to the limitations of the confidentiality provisions set forth in this Section.

VII.4.5. In addition, the RFP Bidders' data and information filed in response to the RFP will be disclosed if required by any federal, state or local agency (including, without limitation, the Commission) or by a court of competent jurisdiction. PECO or the Independent Evaluator will notify the RFP Bidder in advance of such disclosure and cooperate with such RFP Bidder, to the extent deemed reasonable by PECO, and at the expense of the RFP Bidder, to prevent the disclosure of such materials. In any event, PECO, its employees, and agents including the Independent Evaluator will not be responsible to the RFP Bidders or any other party or liable for any disclosure of such designated materials before, during or subsequent to this RFP.

## **ARTICLE VIII. Reserved Rights**

VIII.1.1. PECO will not be liable to any RFP Bidder or any other party for failure to execute a Uniform SMA or any Transaction Confirmation. Nothing herein may be construed to bind PECO unless and until the Commission has approved winning Bids, and the Uniform SMA and each Transaction Confirmation

with an approved Default Supplier has been executed and is effective. Once effective, it is the Uniform SMA and not the RFP Rules or any documents relating thereto that will govern the relationship between and the responsibilities of the parties.

VIII.1.2. The Independent Evaluator reserves the right to reject Proposals submitted in response to this RFP that are incomplete, or do not conform with the requirements of this RFP, or are submitted beyond the deadline for submission, or are submitted by an RFP Bidder that tries to unduly influence in any way the evaluation process.