

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

07 January 2013

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## ARTICLE I. INTRODUCTION

### I.1. Overview

I.1.1. Capitalized terms in this document, which are not defined explicitly herein, are defined in the Supply Master Agreement (“Default Service SMA”). The Default Service SMA is attached as Appendix 1 to this document.

I.1.2. As part of its second Default Service Plan (“DSP II”), PECO Energy Company (“Company” or “PECO”) proposed a competitive bidding process to obtain full requirements electric 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 (“PUC” or “Commission”) 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-2012-2283641) in its Order dated October 12, 2012.

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. The competitive bidding process procures supply for the period beginning June 1, 2013 when PECO’s first Default Service Plan (“DSP I”) 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: Default Service SMA

Appendix 2: Guaranty Process

Appendix 3: Standard Part 1 Form (including the Nomination Form as an Attachment)

Appendix 4: Short Part 1 Form (including the Nomination Form as an Attachment)

Appendix 5: Chief Financial Officer Attestation

Appendix 6: Officers’ Certificate (for RFP Bidders under an Agency Agreement)

Appendix 7: Part 2 Form

Appendix 8: Standard Pre-Bid Letter of Credit

Appendix 9: Sample Bid Form

I.1.5. DSP II plans for the procurement of full requirements supply through the competitive procurement process described in this document for four (4) Classes of Default Service customers: Residential (“RES”), Small Commercial (“SC”), Medium Commercial (“MC”), and Large Commercial and Industrial (“LC&I”). Each such Class 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 in rate schedules GS, HT, and PD with Peak Load Contribution < 100kW and customers in rate schedules AL, TLCL, POL, SLE and SLS | GS                   | General Service                           |
|                                 |   | HT                   | High-Tension Power                        |
|                                 |   | PD                   | Primary – Distribution Power              |
|                                 |   | AL                   | Alley Lighting                            |
|                                 |   | TLCL                 | Traffic Lighting Service                  |
|                                 |   | POL                  | Private Outdoor Lighting                  |
|                                 |   | SLE                  | Street Lighting Customer-Owned Facilities |
| SLS                             | Street Lighting in City of Philadelphia<br>Street Lighting-Suburban Counties  |                      |   |
| Medium Commercial               | Non-residential customers with Peak Load Contribution between 100kW and 500kW   | GS                   | General Service                           |
|                                 |   | HT                   | High-Tension Power                        |
|                                 |   | PD                   | Primary –Distribution Power               |
| Large Commercial and Industrial | Non-residential customers with Peak Load Contribution > 500k  | GS                   | General Service                           |
|                                 |   | HT                   | High-Tension Power                        |
|                                 |   | PD                   | Primary –Distribution                     |
|                                 |   | EP                   | Electric Propulsion                       |

I.1.6. The Company will solicit bids under this RFP for the procurement of full requirements service for the RES, SC and MC Classes on a fixed-price basis. The Company will solicit bids under this RFP for the procurement of full requirements service with energy priced to the PJM day-ahead spot market for the LC&I Class. The Default Service supply (“Default 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 of that Class. An electric supplier selected through the DSP II competitive bidding process to provide Default Supply for a particular Class and approved by the Commission becomes a Default Supplier for that Class. A Default Supplier with a Default Service SMA dated later than January 25, 2013 is an “Eligible Default Supplier” that is eligible for a qualification process exempt for certain specific requirements as further described in Article IV and in Article V.

- I.1.7. A Default Service customer may choose to begin receiving service from an EGS on any 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 any 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. The rates of Default Service customers for a Class are determined on the basis of the prices determined through this RFP for that Class. For the RES Class, rates also incorporate block energy purchases from DSP I as well as any purchases and sales through the hourly spot energy market in PJM as PECO balances the blocks of energy and load on an hourly basis. There are no additional block purchases for the RES Class under DSP II. As provided in the PUC’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 Web site:  
<https://www.peco.com/CustomerService/RatesandPricing/EnergyChoice/Pages/PricetoCompare.aspx>
- I.1.9. There are five (5) solicitations under DSP II that will select electricity suppliers to provide Default Supply for the period June 1, 2013 through May 31, 2015, and for a portion of the Company’s requirements for the period June 1, 2015 through November 31, 2016. Each solicitation will be identified by the month and year during which it will take place. The first solicitation was held in 2012. Solicitations will be held in January 2013, September 2013, January 2014, and September 2014. The schedule for the current solicitation is provided in Section II. 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.1.10. 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. 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.2. Products and Bids**

I.2.1. Default Load for each of the RES, SC, MC, and LC&I Classes is divided into tranches. A tranche for a Class represents a fixed percentage of the Default Load for that Class. A Default Supplier serving one tranche in a particular Class provides full requirements service for the percentage of that Class' Default Load represented by that one 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. The total number of tranches, the percentage size of each tranche, and the MW-Measure of each tranche are also 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>% Size of a Tranche</b> | <b>Total Peak (MW)</b> | <b>Default Peak (MW)</b> | <b>MW-Measure of a Tranche</b> |
|--------------|-----------------------|----------------------------|------------------------|--------------------------|--------------------------------|
| RES          | 60                    | 1.60%                      | 3,568.91               | 2,434.24                 | 40.57                          |
| SC           | 24                    | 4.17%                      | 1,329.98               | 565.46                   | 23.56                          |
| MC           | 12                    | 8.33%                      | 996.10                 | 185.72                   | 15.48                          |
| LC&I         | 18                    | 5.56%                      | 2,480.81               | 201.07                   | 11.17                          |

- I.2.3. The total tranches and the tranche size for the SC, MC, and LC&I 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 potential suppliers in advance of suppliers presenting their qualifications.
- I.2.4. The actual Default Load for the RES, SC, MC, or LC&I Class will depend upon many factors including, but not limited to, customer migration to EGSs and weather conditions. The maximum peak load of each Class may be higher or lower than the PLC utilized to determine the MW-Measure of tranches for each Class. Each participant is responsible for evaluating the uncertainties associated with Default Service Load for each of the Classes during the supply periods.
- I.2.5. Under DSP I, PECO met a portion of the expected seasonal energy requirements of the RES Class using blocks of energy. A block of 50 MW of around-the-clock energy purchased under DSP I expires on December 31, 2015 and thus will contribute to supply of the RES Class during the entire period of DSP II. A block of 160 MW of around-the-clock energy will expire on December 31, 2013 and a block of 100 MW of around-the-clock energy will expire on December 31, 2014. Both these blocks will be replaced by full requirements tranches.
- I.2.6. 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. A product will typically be identified with these three characteristics; for example, the RES-12-Jun13 product represents Default Supply for the RES Class for the supply period June 1, 2013 through May 31, 2014. 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.2.7. The table below provides the schedule of procurement for the products under DSP II.

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

| Product       | Solicitation             |                         |                           |                         |                           |
|---------------|--------------------------|-------------------------|---------------------------|-------------------------|---------------------------|
|               | <i>November<br/>2012</i> | <i>January<br/>2013</i> | <i>September<br/>2013</i> | <i>January<br/>2014</i> | <i>September<br/>2014</i> |
| RES-6-Jun13   | 17                       | 0                       | 0                         | 0                       | 0                         |
| RES-12-Jun13  | 3                        | 0                       | 0                         | 0                       | 0                         |
| RES-18-Jun13  | 7                        | 0                       | 0                         | 0                       | 0                         |
| RES-24-Jun13  | 0                        | 7                       | 0                         | 0                       | 0                         |
| RES-12-Dec13  | 0                        | 0                       | 10                        | 0                       | 0                         |
| RES-17-Jan14  | 0                        | 0                       | 7                         | 0                       | 0                         |
| RES-18-Dec13  | 0                        | 0                       | 7                         | 0                       | 0                         |
| RES-12-Jun14  | 0                        | 0                       | 0                         | 10                      | 0                         |
| RES-24-Jun14  | 0                        | 0                       | 0                         | 7                       | 0                         |
| RES-12-Dec14  | 0                        | 0                       | 0                         | 0                       | 10                        |
| RES-24-Dec14  | 0                        | 0                       | 0                         | 0                       | 7                         |
| RES-5-Jan15   | 0                        | 0                       | 0                         | 0                       | 5                         |
| SC-6-Jun13    | 12                       | 0                       | 0                         | 0                       | 0                         |
| SC-12-Jun13   | 0                        | 12                      | 0                         | 0                       | 0                         |
| SC-12-Dec13   | 0                        | 0                       | 12                        | 0                       | 0                         |
| SC-12-Jun14   | 0                        | 0                       | 0                         | 12                      | 0                         |
| SC-12-Dec14   | 0                        | 0                       | 0                         | 0                       | 12                        |
| MC-6-Jun13    | 0                        | 12                      | 0                         | 0                       | 0                         |
| MC-6-Dec13    | 0                        | 0                       | 12                        | 0                       | 0                         |
| MC-6-Jun14    | 0                        | 0                       | 0                         | 12                      | 0                         |
| MC-6-Dec14    | 0                        | 0                       | 0                         | 0                       | 12                        |
| LC&I-12-Jun13 | 0                        | 18                      | 0                         | 0                       | 0                         |
| LC&I-12-Jun14 | 0                        | 0                       | 0                         | 18                      | 0                         |



I.2.8. 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 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. The Load Caps apply to the list of products that contribute to Default Supply for a Class at a given point in time. The table below provides the Load Caps for the products under DSP II. For example, at any given point in time in the period from June 1, 2014 to November 30, 2014, the following products contribute to Default Supply for the Residential Class: RES-18-Jun13, RES-24-Jun13, RES-12-Dec 13, RES-18-Dec 13, RES-17-Jan14, RES-12-Jun14, and RES-24-Jun14. The number of tranches for these products combined is 55 tranches. For Residential customers to have no more than a 50% exposure to any one Default Supplier during this period, a single Default Supplier would need to bid and win no more than 27 tranches of all these products combined.

**Table I-4. Load Caps for DSP II.**

| <b>Class</b> | <b>Time Period</b> | <b>Product or Products that contribute to Default Supply during time period</b>  | <i>Tranches Available</i> | <i>Load Cap</i> |
|--------------|--------------------|--|---------------------------|-----------------|
| RES          | Jun-Nov 13         | RES-6-Jun13 and RES-12-Jun13 and RES-18-Jun13 and RES-24-Jun13   | 34                        | 17              |
|              | Dec 13             | RES-12-Jun13 and RES-18-Jun13 and RES-24-Jun13 and RES-12-Dec13 and RES-18-Dec13   | 34                        | 17              |
|              | Jan-May 14         | RES-12-Jun13 and RES-18-Jun13 and RES-24-Jun13 and RES-12-Dec13 and RES-18-Dec13 and RES-17-Jan14                                  | 41                        | 20              |
|              | June-Nov 14        | RES-18-Jun13 and RES-24-Jun13 and RES-12-Dec13 and RES-18-Dec13 and RES-17-Jan14 and RES-12-Jun14 and RES-24-Jun14                 | 55                        | 27              |
|              | Dec 14             | RES-24-Jun13 and RES-18-Dec13 and RES-17-Jan14 and RES-12-Jun14 and RES-24-Jun14 and RES-12-Dec14 and RES-24-Dec14                 | 55                        | 27              |
|              | Jan-May 15         | RES-24-Jun13 and RES-18-Dec13 and RES-17-Jan14 and RES-12-Jun14 and RES-24-Jun14 and RES-12-Dec14 and RES-24-Dec14 and RES-5-Jan15 | 60                        | 30              |
| SC           | Jun-Nov 13         | SC-6-Jun13 and SC-12-Jun13   | 24                        | 12              |
|              | Dec 13-May 14      | SC-12-Jun13 and SC-12-Dec13  | 24                        | 12              |
|              | Jun-Nov 14         | SC-12-Dec13 and SC-12-Jun14  | 24                        | 12              |
|              | Dec 14-May 15      | SC-12-Jun14 and SC-12-Dec14  | 24                        | 12              |

| <b>Class</b> | <b>Time Period</b> | <b>Product or Products that contribute to Default Supply during time period</b> | <i>Tranches Available</i> | <i>Load Cap</i> |
|--------------|--------------------|---|---------------------------|-----------------|
| MC           | Any                | MC-6  | 12                        | 6               |
| LC&I         | Any                | LC&I-12   | 18                        | 9               |

I.2.9. For this solicitation, the available tranches and Load Caps are provided in the following table:

**Table I-5. Available Tranches and Load Caps in This Solicitation.**

| <b>Products</b> | <b>Available Tranches</b> | <b>Load Caps Apply to an RFP Bidder When an RFP Bidder Has</b> | <b>Maximum Number of Tranches Bid if Load Caps Apply</b> |
|-----------------|---------------------------|--|--|
| RES-24-Jun13    | 7                         | Won more than 10 RES tranches in November 2012 Solicitation    | 17 less RES tranches won in November 2012 Solicitation   |
| SC-12-Jun13     | 12                        | Won SC tranches in November 2012 Solicitation                  | 12 less SC tranches won in November 2012 Solicitation    |
| MC-6-Jun13      | 12                        | Load Caps apply always   | 6  |
| LC&I-12-Jun13   | 18                        | Load Caps apply always   | 9  |

I.2.10. The Load Caps for this solicitation apply as follows:

- The Load Cap for the RES Class will apply as follows. An RFP Bidder is limited to 17 tranches for the RES-6-Jun13, RES-12-Jun13, RES-18-Jun13, and RES-24-Jun13 products combined. An RFP Bidder may bid on all available tranches for the RES-24-Jun13 product in the January 2013 Solicitation unless the RFP Bidder won more than 10 RES tranches in the November 2012 solicitation. In that case, the RFP Bidder is limited to bidding on 17 tranches less the number of RES tranches won in the November 2012 solicitation.
- The Load Cap for the SC Class will apply as follows. An RFP Bidder is limited to 12 tranches for the SC-6-Jun13 and SC-12-Jun13 products combined. An RFP Bidder may bid on all available tranches for the SC-12-Jun13 product in the January 2013 Solicitation unless the RFP Bidder won SC tranches in the November 2012 solicitation. In that case, the RFP Bidder is limited to bidding on 12 tranches less the number of tranches won in the November 2012 solicitation.

- The Load Cap for the MC Class will apply as follows. In the January 2013 solicitation, an RFP Bidder is limited to 6 tranches for the MC-6-Jun13 product.
  - The Load Cap for the LC&I Class will apply as follows. In the January 2013 solicitation, an RFP Bidder is limited to 9 tranches for the LC&I-12-Jun13 product.
- I.2.11. An electric supplier participating in this RFP bids to provide Default Supply for one or more of the RES, SC, MC, and LC&I Classes, and for one or more supply periods. The obligations of the Default Supplier are described in the Default Service SMA. The main provisions of the Default Service SMA are summarized in Section I.4.
- I.2.12. 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.2.13. The contingency plan for products that are more than six (6) months in duration is as follows. In the event that PECO is unable to obtain Default Supply for all tranches in a solicitation, PECO will assume responsibility for the unfilled tranches as a PJM Load Serving Entity (“LSE”) for the first six (6) months of the supply period, acquiring the necessary supply through PJM-administered markets and obtaining sufficient Alternate Energy Credits (“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. PECO and the Independent Evaluator will hold a Guaranty Process, described in more detail in Appendix 2. The Guaranty Process allows a supplier unable to use the Form of Guaranty provided as Exhibit F to the Default Service SMA to submit for consideration by PECO the guaranty that the supplier uses in its normal course of business. The Guaranty Process also allows a supplier able to use the Form of Guaranty provided as Exhibit F to the Default Service SMA to propose modifications to the Form of Guaranty that are non-material in nature, or that are advantageous to both PECO and the prospective supplier. Typically, all approved modifications will be posted in a single document on the RFP Web site in advance of the date at which RFP Bidders must respond to qualification standards. An RFP Bidder using the Form of Guaranty may elect to incorporate any or all of the approved modifications to the Form of Guaranty, regardless of whether the RFP Bidder itself or another RFP Bidder proposed the modification.
- I.3.2. RFP Bidders that did not qualify in a previous solicitation under DSP II use the Standard Part 1 Form provided as Appendix 3 of these RFP Rules to respond to the qualification standards described in Article IV. RFP Bidders that previously qualified in a previous solicitation under DSP II may participate in an abbreviated qualification process by using the Short Part 1 Form provided as Appendix 4 of these RFP Rules to respond to the qualification standards described in Article IV. The qualification standards include the submission of contact information, general representations, and the submission of financial information for a creditworthiness assessment. Part 1 Proposals are submitted during the “Part 1 Window”. The generic term “Part 1 Form” refers either to the Standard Part 1 Form or the Short Part 1 Form. The Standard Part 1 Form and the Short Part 1 Form, as well as other forms mentioned in these RFP Rules, are provided as Appendices to these RFP Rules and are also available electronically on the RFP Web site: [www.pecoprocurement.com](http://www.pecoprocurement.com).
- I.3.3. RFP Bidders use the Part 2 Form provided as Appendix 7 of these RFP Rules to respond to the Part 2 Proposal requirements described in Article V of these RFP Rules. The Part 2 Proposal requirements include additional representations, submission of the Default Service SMA for an RFP Bidder that is not an Eligible Default Supplier, and a Pre-Bid Letter of Credit in an amount sufficient

to support the Bids. A Default Supplier with a Default Service SMA dated later than January 25, 2013 is an “Eligible Default Supplier”. Part 2 Proposals are submitted during the “Part 2 Window”.

- I.3.4. RFP Bidders use the Bid Form provided with the Part 1 Notification to submit their Bids. A sample Bid Form is provided for illustrative purposes as Appendix 9 of these RFP Rules. Each RFP Bidder’s Bids must be received between 10 AM and 12 PM (noon) on the “Bid 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 to the Commission. The PUC 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 PUC 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 Transaction Confirmations within three (3) business days of the Commission decision. Within fifteen (15) days of the close of the solicitation, the Independent Evaluator releases the weighted average price as well as the percentage of load represented by each tranche for each product procured.

#### **I.4. Supplier’s Obligations**

- I.4.1. An electric 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, MC, and LC&I Classes.
- I.4.2. This section describes in general terms several provisions of the Default Service SMA. This is a summary only and is subject to and qualified in its entirety by the Default Service SMA provided as Appendix 1 to the RFP Rules. Each RFP Bidder accepts the obligations and associated rights to provide Default Service as defined in the Default Service 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 electricity service including, without limitation, energy, capacity, transmission (excluding Network Integration Transmission Service),

ancillary services, applicable losses, congestion management costs, and such other services or products that are required to serve the Default Load for that Class (excluding distribution service).

- I.4.4. Default Suppliers are also responsible for providing AECs during the term of the Default Service 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 PUC 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. Default Suppliers will transfer AECs to PECO at the end of the first six months of an AEPS reporting period as well as at the end of period.
- I.4.5. A Default Supplier that fails to provide AECs required by the Default Service SMA will be required to pay liquidated damages based on the applicable AEC Non-Solar Penalty or the AEC Solar Penalty as defined in the Default Service SMA and the AECs that the Default Supplier has failed to provide. If the PUC subsequently establishes an alternative compliance payment under the AEPS Act for non-compliance with the Tier I (solar) requirements in excess of the AEC Solar Penalty, the Default Supplier shall also pay PECO the amount in excess of the AEC Solar Penalty; if the Tier I (solar) alternative compliance payment is less than AEC Solar Penalty, PECO shall refund the difference to the Default Supplier.
- 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 this procurement, PECO will inform RFP Bidders of the amounts of AECs allocated for this purpose.
- I.4.7. A Default Supplier for the RES, SC, and MC Classes 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 RFP Bidder and for that product. A Default Supplier for the LC&I Class 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 RFP Bidder and for that product. A Default Supplier for the LC&I Class will also be paid the PJM day-ahead price for energy and the RPM price for capacity.

- 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 the Auction Revenue Rights (“ARRs”) to Default Suppliers in proportion to the percentage of Default Load that they serve. A Default Supplier will participate in the PJM process for the nominations of ARR to the extent that the supply period under the Transaction Confirmation is inclusive of the PJM Planning Period for which the ARR is nominated; otherwise, PECO will participate in the PJM ARR nomination process.
- I.4.10. On April 29, 2011, the Commission initiated an investigation into Pennsylvania’s retail electricity market in its Order entered in Docket I-2011-2237952. The Commission adopted a Final Order on December 15, 2011 with recommended directives for each Electric Distribution Company’s (“EDC”) upcoming Default Service Programs and adopted a Tentative Order on the same date regarding the structure of retail auctions for residential customers. PECO’s Default Service Program is consistent with the Commission’s recommendations to file a two-year plan in case any long term changes proposed in the Investigation need to be implemented. Additionally, the Default Service SMA includes additional acknowledgments by the Default Supplier of the possibility of changes in Default Load in light of the Commission’s Retail Markets Investigation and its consideration of whether entities other than EDCs should be Default Service providers in the future, as well as additional retail market enhancements.

## ARTICLE II. Information and Schedule

### II.1. RFP Web Site

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

II.1.2. The RFP Web site 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 the previous PECO solicitations and archives of documents, FAQs and announcements from previous solicitations provided for reference purposes only.

Supplier Information: This section provides documents regarding the RFP as well as frequently asked questions (“FAQs”), RFP-related announcements, and information about rates. 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 will be removed before posting.

Data Room: This section provides historical data to assist prospective suppliers. Links to the PJM Web site 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. 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. This schedule may be amended if circumstances warrant. Any such amendments will be posted to the RFP Web site.

**Table II-1. Schedule**

| <b>Schedule for This Solicitation</b>   |                              |
|---|------------------------------|
| Submissions under Guaranty Process due  | Monday, January 7, 2013      |
| Bidder Information Session  | Monday, January 7, 2013      |
| Part 1 Window Opens   | Thursday, January 10, 2013   |
| Approved modifications to Form of Guaranty posted   | Thursday, January 10, 2013   |
| Decision on alternate guaranty forms  | Tuesday, January 15, 2013    |
| Part 1 Date (Part 1 Window Closes)  | Tuesday, January 15, 2013    |
| Part 1 Notification Date  | Thursday, January 17, 2013   |
| Part 2 Proposal Window Opens  | Friday, January 18, 2013     |
| Bid Submission training   | Friday, January 18, 2013     |
| Part 2 Date (Part 2 Window Closes)  | Thursday, January 24, 2013   |
| Part 2 Notification Date  | Monday, January 28, 2013     |
| Bid Date (Bids are Due)   | Tuesday, January 29, 2013    |
| IE provides its report to the PUC   | Wednesday, January 30, 2013  |
| PUC Decision (close of business)  | Thursday, January 31, 2013   |
| <i>If Bids are approved by the PUC:</i>   |                              |
| PECO executes the Default Service SMA   | By Friday, February 1, 2013  |
| PECO sends Transaction Confirmations  | By Monday, February 4, 2013  |
| Default Supplier meets the creditworthiness requirements and executes all Transaction Confirmation(s) | By Tuesday, February 5, 2013 |

II.2.2. The Bid Dates for future solicitations are provided below.

**Table II-2. Bid Dates**

| <b>Solicitation</b> | <b>Bid Dates</b>            |
|---------------------|-----------------------------|
| September 2013      | Tuesday, September 24, 2013 |
| January 2014        | Tuesday, January 28, 2014   |
| September 2014      | Tuesday, September 23, 2014 |

### **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. Each RFP Bidder can submit at most one Part 1 Proposal and one Part 2 Proposal for each solicitation. An RFP Bidder that qualifies for this 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. All Part 1 Proposals and all Part 2 Proposals are submitted to the Independent Evaluator 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 called 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 II 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. An electric supplier selected through the DSP II competitive bidding process to provide Default Supply for a particular Class and approved by the Commission becomes a Default Supplier for that Class.
- III.1.4. The Part 1 Proposal for an RFP Bidder includes one (1) electronic copy and two (2) hardcopy original completed Part 1 Forms, as well as one (1) copy of all documents required by the Part 1 Form. One (1) copy of the Part 1 Form, as well as any Draft Letter of Credit, must be submitted electronically in Microsoft Word, either on a CD that is included with the hardcopy Part 1 Forms or by email to the Independent Evaluator at [Pecoprocurement@nera.com](mailto:Pecoprocurement@nera.com). Any documents required by the Part 1 Form must be submitted either electronically (on a CD that is included with the Part 1

Proposal or by email to the Independent Evaluator at [Pecoprocedurement@nera.com](mailto:Pecoprocedurement@nera.com)) or in hard copy.

- 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. Section IV.3 describes the process by which RFP Bidders may propose modifications to the Standard Pre-Bid and Post-Bid Letters of Credit and describes the information that RFP Bidders must provide for the Independent Evaluator to prepare the Default Service SMA documents. Section IV.4 describes the regulatory representations required. Section IV.5 lists additional representations that are required. Section IV.6 lists additional requirements applicable only to RFP Bidders submitting a Proposal under an Agency Agreement. Section IV.7 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 Part 2 Form during the Part 1 Window for early processing. The requirements of the Part 2 Proposal are described in this Article V. “Previously eligible RFP Bidder” means an RFP Bidder that became eligible to submit Bids in a previous solicitation held under DSP II 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 Part 2 Proposal for an RFP Bidder includes one (1) electronic copy and two (2) hardcopy original completed Part 2 Forms, a Pre-Bid Letter of Credit, as well as two (2) originals of all Default Service SMA documents required by the Part 2 Form. One (1) copy of the Part 2 Form must be submitted electronically in Microsoft Word, either on a CD that is sent with the hardcopy Part 2 Forms or by email to the Independent Evaluator at [PECOProcurement@nera.com](mailto:PECOProcurement@nera.com). Any documents must be submitted in hard copy in the number of originals specified required by the Part 2 Form. The RFP Bidder uses for purposes of submission of the Part 2 Proposal the Default Service SMA documents received from the Independent Evaluator as part of the Part 1 Materials.
- 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 the Default Service SMA documents required of an RFP Bidder, including the guaranty required of 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 Default Service 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 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 is expected to sign the Default Service SMA as well as any Transaction Confirmations if any of the RFP Bidder's Bids are approved by the Commission. In the Part 1 Proposal, the Officer of the RFP Bidder may nominate a substitute Officer to sign the Default Service SMA and/or the Transaction Confirmations in case the Officer of the RFP Bidder is not available.
- 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, 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 II 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 II 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

A Default Supplier with a Default Service SMA dated later than January 25, 2013 is an “Eligible Default Supplier”. There are no Eligible Default Suppliers in this solicitation under DSP II.

### 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 and represent that this is a change in only in the RFP Bidder’s name and not a change in the corporate structure of the RFP Bidder. 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 Default Service 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 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 Part 2 Form. 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 the Part 2 Form during the Part 1 Window for early processing.

- If an RFP Bidder has not previously qualified, 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 the 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.
- Whether or not the RFP Bidder has previously qualified, the Officer of the RFP Bidder may name a Designee. The Officer of the RFP Bidder will represent that the Designee is an individual authorized to undertake contracts (including the Default Service SMA) and bind the RFP Bidder. Either the Officer of the RFP Bidder or the Designee must sign the Default Service SMA. It is expected that either the Officer of the RFP Bidder or the Designee will sign the Transaction Confirmations should any of the RFP Bidder's Bids be approved by the Commission. Should neither the Officer of the RFP Bidder or the Designee be available to sign the Transaction Confirmations, the RFP Bidder will advise PECO of this fact, will name another individual to sign the Transaction Confirmations, and will confirm that this individual is an officer, a director, or an individual otherwise authorized to undertake contracts (including the Default Service SMA) and bind the RFP Bidder.

IV.1.3. Communications with the RFP Bidder. The RFP Bidder must elect the method by which the Independent Evaluator will provide notifications to the RFP Bidder and by which the RFP Bidder will respond to the Independent Evaluator. The RFP Bidder must also elect the method by which the Independent Evaluator will provide documents necessary for participation to the RFP Bidder.

- If the RFP Bidder has not previously qualified, the RFP Bidder must elect whether the RFP Bidder will receive notifications from the Independent Evaluator and send responses to the Independent Evaluator by fax or by email. If the RFP Bidder elects to receive notifications by fax, a fax number must be provided for the Representative of the RFP Bidder. Such notifications include all notices assessing the completeness of the Part 1 Proposal or the Part 2 Proposal, as well as the Part 1 Notification and the Part 2 Notification. The RFP Bidder



must also elect whether the RFP Bidder will receive documents needed for participation from the Independent Evaluator by overnight delivery service or by secure file transfer. Such documents include the Default Service SMA documents, the confidential information required to submit Bids on the Bid Date, as well as any training materials prepared by the Independent Evaluator. The files for such documents may be large or may contain particularly sensitive information and thus are not typically suitable for delivery by email. 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.

- A previously qualified RFP Bidder either must confirm that the methods of communication that it previously elected remain valid or must update this information.
- Whether or not an RFP Bidder has previously qualified, an RFP Bidder that has elected to receive notifications by email may designate up to three (3) authorized individuals who will receive notifications in addition to the Representative of the RFP Bidder. Similarly, an RFP Bidder that has elected to receive documents by secure file transfer system may designate up to three (3) authorized individuals who will receive documents 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 use the Nomination section of the Part 1 Form for this purpose, providing for each authorized individual the individual's name and title, as well as contact information (phone number and email address). 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 Nomination section of the Part 1 Form and 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.1.4. Representative of the RFP Bidder. The Independent Evaluator uses the Representative as the main point of contact for the RFP Bidder. The Independent Evaluator always contacts the Representative

if the Independent Evaluator requires additional information regarding the RFP Bidder's Proposal. The Independent Evaluator always sends correspondence related to the solicitation to the Representative, including confidential information required to submit Bids on the Bid Date. The Representative of the RFP Bidder may, in the Part 1 Proposal or at any time during a solicitation, designate other authorized individuals to receive communications from the Independent Evaluator as well.

- If the RFP Bidder has not previously qualified, the Officer of the RFP Bidder must designate an individual to serve as Representative of the RFP Bidder. 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 by providing all the required contact information.

IV.1.5. Representations by the Officer of the RFP Bidder. Whether or not the RFP Bidder has previously qualified, the Officer of the RFP Bidder must certify that:

- he/she is an officer, a director, or an individual otherwise authorized to undertake contracts (including the Default Service Program Supply Master Agreement) and bind the RFP Bidder;
- the Part 1 Proposal will remain valid and remain in full force and effect until six (6) business days after the Bid Date;
- all information provided in the Part 1 Proposal is true and accurate to the best of the Officer's knowledge and belief; and
- 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.

IV.1.6. All information and certifications in this Section IV.1 must be provided exclusively by completing Section 1 of the Part 1 Form, as further explained in Article VII.

## **IV.2. Financial Requirements**

IV.2.1. An RFP Bidder includes in its Part 1 Proposal one (1) copy of any document required in this Section IV.2, either in hard copy or electronically on a CD.

IV.2.2. Election of Entity on Whose Financial Standing the RFP Bidder is Relying. For purposes of a creditworthiness evaluation, each RFP Bidder elects either: (a) to rely on its own financial standing; or: (b) to rely on the financial standing of another entity. The other entity on whose financial standing the RFP Bidder is relying is either a guarantor (the “RFP Guarantor”), or a Principal if the RFP Bidder is submitting a Proposal under an Agency Agreement. The requirements for an RFP Bidder submitting a Proposal under an Agency Agreement are further explained in Section IV.6.

- An RFP Bidder that has not previously qualified must clearly select one of these two (2) options in its Part 1 Proposal. If the RFP Bidder is relying on the financial standing of another entity, the RFP Bidder must provide that entity’s legal name and address.
- 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 the 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 if the RFP Bidder had not previously qualified.

IV.2.3. Financial Information. The financial information submitted in the Part 1 Proposal pertains to the entity on whose financial standing the RFP Bidder is relying, as specified in response to Paragraph IV.2.2.

- An RFP Bidder that has not previously qualified and that selects option (a) in Paragraph IV.2.2 must include available financial information for the RFP Bidder in its Part 1 Proposal.

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 equivalent 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 more specifically provided 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 and that selects option (b) in Paragraph IV.2.2 relies on the financial standing of another entity (an RFP Guarantor or a Principal) and financial information must be available for such an entity. An RFP Bidder must submit, if available, the entity’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 entity’s most recent quarterly, monthly, or bi-annual financial information accompanied by an attestation by the entity’s Chief Financial Officer (or equivalent 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 more specifically provided in Appendix 5 of these RFP Rules.
- A previously qualified RFP Bidder must confirm that that the previously submitted financial information remains valid or provide updated information, including a balance sheet, income

statement, cash flow statement, and any accompanying notes and schedules, for the entity on whose financial standing it is relying.

IV.2.4. Credit Ratings. The credit ratings submitted in the Part 1 Proposal pertain to the entity on whose financial standing the RFP Bidder is relying, as specified in response to Paragraph IV.2.2.

- An RFP Bidder that has not previously qualified must submit all available credit ratings for the entity on whose financial standing it is relying. This entity is the RFP Bidder if the RFP Bidder selects option (a) in Paragraph IV.2.2. This entity is the RFP Guarantor or a Principal if the RFP Bidder selects option (b) in Paragraph IV.2.2. The RFP Bidder must submit all available ratings 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 confirm that the credit ratings last submitted for the entity on whose financial standing the RFP Bidder relies 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. All information and certifications in this Section IV.2 must be provided exclusively by completing Section 2 of the Part 1 Form, as further explained in Article VII.

### **IV.3. Letters of Credit and Default Service SMA Documents**

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 the RES, SC, and MC products; and \$125,000 per tranche bid on the LC&I product. This Pre-Bid Letter of Credit must be in the form of the Standard Pre-Bid Letter of Credit provided as Appendix 8 to these RFP Rules or must incorporate only modifications that have been approved by PECO and 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 electronically, in Microsoft Word with tracked changes, and may be saved to a CD that is included with the Part 1 Proposal, or it may be emailed to the Independent Evaluator at [PECOProcurement@nera.com](mailto:PECOProcurement@nera.com). 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 Web site. Each RFP Bidder may use any of the approved modifications, regardless of whether the RFP Bidder itself or another RFP Bidder proposed the modification.

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 Default Service SMA includes, as Exhibit C, a Form of Letter of Credit that may be used to post security under the terms of the Default Service 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 electronically, in Microsoft Word with tracked changes, and may be saved to a CD that is included with the Part 1 Proposal, or it may be emailed to the Independent Evaluator at [PecoProcurement@nera.com](mailto:PecoProcurement@nera.com). 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 Web site. Each RFP Bidder may use any of the approved modifications, regardless of whether the RFP Bidder itself or another RFP Bidder proposed the modification.

IV.3.3. Information to Prepare the Default Service SMA. The requirements of this Paragraph apply only to RFP Bidders that are not Eligible Default Suppliers. Such RFP Bidder must, in its Part 2 Proposal, submit two (2) signed original Default Service SMAs, including all exhibits. The Default Service SMA is a document that the Independent Evaluator transmits to the RFP Bidder pursuant to a successful Part 1 Proposal. The Independent Evaluator transmits this document electronically either on a CD sent by overnight delivery to the Representative of the RFP Bidder or by secure file transfer, depending on the RFP Bidder's election under Paragraph IV.1.3.

- Such RFP Bidder that has not previously qualified must provide all information needed to prepare for execution the Default Service SMA, including all exhibits. The RFP Bidder will be required to specify any elections to be made in the Default Service SMA and to provide the contact information to prepare the form of notice, which is appended as Exhibit H to the Default Service SMA.
- Such previously qualified RFP Bidder either must confirm that all previously submitted information for preparation of the Default Service SMA and all exhibits remains valid or the RFP Bidder must update this information.

IV.3.4. Ability to Perform. The requirements of this Paragraph apply only to RFP Bidders that are not Eligible Default Suppliers.

- Whether or not the RFP Bidder has previously qualified, the Officer of the RFP Bidder must certify that the RFP Bidder has no pending legal proceedings or, to its knowledge, threatened legal proceedings against it or any of its affiliates that could materially adversely affect its ability to perform its obligations under the Default Service SMA and each Transaction Confirmation.

IV.3.5. Guaranty. The requirements of this Paragraph apply only to RFP Bidders that rely on the financial standing of an RFP Guarantor. The requirements of this Paragraph apply to all RFP Bidders that rely on the financial standing of an RFP Guarantor, whether or not such RFP Bidders are previously qualified RFP Bidders or Eligible Default Suppliers, with one exception. If an Eligible Default Supplier relies on the financial standing of an RFP Guarantor and the Guaranty Amount under the guaranty currently held by PECO is equal to the RFP Guarantor's Unsecured Credit Limit, then such Eligible Default Supplier is exempted from the requirements of this Paragraph and of Paragraph IV.7.3. All other RFP Bidders that rely on the financial standing of an RFP Guarantor must, in the Part 1 Proposal, provide all information that will be needed to prepare the guaranty for execution. The Independent Evaluator uses this information to prepare the guaranty. The guaranty is a document that the Independent Evaluator transmits to each such RFP Bidder pursuant to a successful Part 1 Proposal. The Independent Evaluator transmits this document electronically either on a CD sent by overnight delivery to the Representative of the RFP Bidder or by secure file transfer, depending on such RFP Bidder's election under Paragraph IV.1.3.

- Such RFP Bidder that has not previously qualified will be required: (i) to specify the governing laws under which the RFP Guarantor is organized; (ii) to provide contact information for the RFP Guarantor, including the name and title of the signatory of the guaranty for notices under the guaranty; (iii) to make its elections to incorporate any or all of the approved modifications to the Form of Guaranty.



- Such previously qualified RFP Bidder either must confirm that the previously submitted information needed to prepare the guaranty, including any previous elections, remains valid or must update this information. Further, if there are any modifications to the Form of Guaranty newly approved for the current solicitation, such RFP Bidder must submit its elections for these modifications.
- Whether or not such RFP Bidder has previously qualified, such RFP Bidder may participate in the Guaranty Process, as explained in Paragraph I.3.1 and in Appendix 2.

IV.3.6. All information and certifications in this Section IV.3 must be provided exclusively by completing Section 3 of the Part 1 Form, as further explained in Article VII.

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

IV.4.1. FERC Authorization. The requirements of this Paragraph apply only to RFP Bidders that are not Eligible Default Suppliers.

- Whether or not such RFP Bidder has previously qualified, the Officer of such RFP Bidder must certify that the RFP Bidder has FERC authorization to make sales of energy, capacity, and ancillary services at market-based rates in PJM.
- Although a copy of the FERC Order granting such authority is not required, PECO may request a copy of this Order if such RFP Bidder becomes an Eligible Default Supplier.

IV.4.1. 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 a Load Serving Entity (“LSE”) by the start of the supply period.

- Such RFP Bidder that has not previously qualified must, in its Part 1 Proposal, either: (i) demonstrate that the RFP Bidder is a Load Serving Entity (“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.

- Such RFP Bidder that previously qualified has already satisfied this requirement and is not required to submit information anew.

IV.4.2. The certifications and documents in this Section IV.4 must be provided exclusively by completing Section 4 of the Part 1 Form, as further explained in Article VII.

#### **IV.5. Additional Representations**

IV.5.1. Whether or not an RFP Bidder has previously qualified, the Officer of an RFP Bidder must, in the Part 1 Proposal, affirmatively accept the terms of the Default Service SMA and of the RFP.

- The Officer of the RFP Bidder must certify that he/she understands the terms of the Default Service SMA, that the RFP Bidder accepts all of the terms of the Default Service SMA without modifications, and that the RFP Bidder will execute Transaction Confirmation(s) for all Bids approved by the Commission.
- The Officer of the RFP Bidder must acknowledge that 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.

IV.5.2. Whether or not an RFP Bidder has previously qualified, the Officer of the RFP must certify that 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.

IV.5.3. The certifications in this Section IV.5 must be provided exclusively by completing Section 5 of the Part 1 Form, as further explained in Article VII.

#### **IV.6. RFP Bidders Under an Agency Agreement**

IV.6.1. The requirements of this Section IV.6 apply only to RFP Bidders submitting a Proposal under an agency authorization ("Agency Agreement"); other RFP Bidders are not subject to the requirements of this Section IV.6.

IV.6.2. Certifications. The Officer of an RFP Bidder submitting a Proposal under an Agency Agreement must make the following certifications.

- Whether or not an RFP has previously qualified, the Officer of such RFP Bidder must certify that the Officer of the RFP Bidder has the authority to bind the Principal(s).
- If an RFP Bidder has not previously qualified, the Officer of the RFP Bidder must acknowledge that an Officers' Certificate, substantially in the form of Appendix 6 to these RFP Rules, must be provided with the Part 2 Proposal.

IV.6.3. Additional Requirements. An RFP Bidder submitting a Proposal under an Agency Agreement must comply with the following additional requirements.

- If such RFP Bidder has not previously qualified, the RFP Bidder must:
  - (1) identify the Principal or Principals to the Agency Agreement;
  - (2) provide one (1) copy of its Agency Agreement with its Part 1 Proposal, either in hard copy or electronically on a CD;
  - (3) identify a Principal as the entity on whose financial standing the RFP Bidder relies, and for which financial information is provided under Section IV.2. 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.
- If such RFP Bidder has previously qualified, the RFP Bidder either must confirm that the previously submitted information remains valid or must update this information.

IV.6.4. Draft Officers' Certificate. Whether or not the RFP Bidder has previously qualified, an RFP Bidder submitting a Proposal under an Agency Agreement 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, the Agency Agreement, and the Default Service SMA 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 any Transaction Confirmation(s) pursuant to the Default Service SMA on behalf of the Principal(s).

IV.6.5. The information required by this Section IV.6 must be provided exclusively by completing Section 6 of the Part 1 Form, as further explained in Article VII.

#### **IV.7. Foreign RFP Bidders and Foreign Entities**

IV.7.1. The requirements of this Section apply only to: (1) Foreign RFP Bidders that seek to be granted unsecured credit under the terms of the Default Service 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.7.2. Additional requirements for Foreign RFP Bidders.

- 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.
- If such RFP Bidder has not 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 Default Service 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 Default Service 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 Default Service SMA on behalf of the Foreign RFP Bidder has the authority to execute the Default Service SMA and that the governing board of such Foreign RFP Bidder has approved the execution of the Default Service 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 Default Service 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 Default Service 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 Default Service SMA on behalf of the Foreign RFP Bidder has the authority to execute the Default Service SMA and that the governing board of such Foreign RFP Bidder has approved the execution of the Default Service 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 Default Service SMA. Exhibit G to the Default Service SMA includes a sample of the legal opinion of outside counsel for the Foreign RFP Bidder that is sufficient. 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.

IV.7.3. Additional requirements for RFP Bidders relying on the financial standing of a Foreign Guarantor.

- 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.
- If such RFP Bidder has not 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 Default Service 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 Default Service 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 Default Service SMA on behalf of the RFP Guarantor has the authority to execute the guaranty pursuant to the Default Service SMA and that the governing board of such RFP Guarantor has approved the execution of the guaranty pursuant to the Default Service 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 Default Service 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 Default Service 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 Default Service SMA on behalf of the RFP Guarantor has the authority to execute the guaranty pursuant to the Default Service SMA and that the governing board of such RFP Guarantor has approved the execution of the guaranty pursuant to the Default Service 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 Default Service SMA. Exhibit G to the Default Service SMA includes a sample for the legal opinion of outside counsel that is sufficient for a Foreign Entity as RFP Guarantor. 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.

IV.7.4. Additional Requirements for RFP Bidders submitting a Proposal under an Agency Agreement with a Foreign Entity as Principal.

- Whether or not such RFP Bidder has previously qualified, such RFP Bidder 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.
- If such RFP Bidder has not 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 Default Service 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 Default Service 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 Default Service 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 Default Service 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 Default Service SMA. Exhibit G to the Default Service SMA includes a sample of the legal opinion of outside counsel that is sufficient for the Foreign Entity as Principal (Seller). 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.

IV.7.5. The information required by this Section must be provided exclusively by completing Section 7 of the Part 1 Form, as further explained in Article VII.



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

A Default Supplier with a Default Service SMA dated later than January 25, 2013 is an “Eligible Default Supplier”. There are no Eligible Default Suppliers in this solicitation under DSP II.

### **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 remains valid or must update this information.

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 Part 1 Form and the 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 Part 1 Form is unavailable to make the representations of the Part 2 Form, the RFP Bidder must re-submit the Part 1 Form in its entirety 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 Default Service 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 Default Service 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 Default Service SMA at the price specified in the Bid;
- if the Commission approves some or all of the RFP Bidder's Bids, the Officer of the RFP Bidder or the Designee will execute, or will nominate another authorized individual to execute, all Transaction Confirmations required by the Commission's decision under the Default Service SMA by 2 PM of the fourth business day after the Bid Date; and
- In any such 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.

V.1.3. The information required by this Section V.1 must be provided exclusively by completing Section 1 of the Part 2 Form, as further explained in Article VII.

## **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 the RES, SC, and MC products, plus \$125,000 per tranche bid on the LC&I product 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 more than one Class.

V.2.2. The RFP Bidder must either use the Standard Pre-Bid Letter of Credit provided in Appendix 8 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 Web site. 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 Web site.

- V.2.3. 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 either approved or rejected each of the winning Bids for this solicitation; or (iii) the Commission approves some or all of the RFP Bidder's Bids and the RFP Bidder fails to execute all Transaction Confirmations in the timeframe required by the Default Service SMA or fails to meet the creditworthiness requirements of the Default Service SMA upon execution of the Transaction Confirmations.
- 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. Acknowledgment of Documents Required. If the Part 2 Form is submitted for early processing and the Pre-Bid Letter of Credit is not included with the Part 2 Form, the Officer of the RFP Bidder acknowledges that the Pre-Bid Letter of Credit is required.
- V.2.6. The information required by this Section V.2 must be provided exclusively by completing Section 2 of the Part 2 Form, as further explained in Article VII.

### **V.3. Default Service SMA Documents**

- V.3.1. Default Service SMA. The requirements of this Paragraph apply only to RFP Bidders that are not Eligible Default Suppliers. The Independent Evaluator, using the information provided by the RFP Bidder in its Part 1 Proposal in response to the requirements of Paragraph IV.3.3, prepares the Default Service SMA, including all necessary exhibits, for execution. Each RFP Bidder that qualified pursuant to a successful Part 1 Proposal receives from the Independent Evaluator the Default Service SMA, which the Independent Evaluator either transmits by secure file transfer or saves

electronically on a CD that is sent by overnight delivery service. The individual who signs the Default Service SMA is either the Officer of the RFP Bidder or the Designee named in the Part 1 Proposal. Whether or not the RFP Bidder is previously eligible:

- the RFP Bidder must print two (2) originals of the Default Service SMA document that the RFP Bidder received directly from the Independent Evaluator upon qualifying pursuant to a successful Part 1 Proposal;
- the Officer of the RFP Bidder or the Designee must sign:
  - The two (2) signature pages of the originals of the Default Service SMA; and
  - The two (2) originals of Exhibit J, the PJM Declaration of Authority.
- The RFP Bidder must submit both originals of the Default Service SMA, including all exhibits.

V.3.2. Guaranty. The requirements of this Paragraph do not apply to RFP Bidders that do not rely on the financial standing of an RFP Guarantor. The Independent Evaluator, using the information provided by the RFP Bidder in its Part 1 Proposal in response to the requirements of Paragraph IV.3.5, prepares the guaranty for execution. With the exception of an Eligible Default Supplier that posted a guaranty in an amount equal to its RFP Guarantor's Unsecured Credit Limit, each RFP Bidder that qualified pursuant to a successful Part 1 Proposal and that relies on the financial standing of an RFP Guarantor receives from the Independent Evaluator the guaranty, which the Independent Evaluator either transmits by secure file transfer or saves electronically on a CD that is sent by overnight delivery service. If an RFP Bidder holds a current Default Service SMA with PECO (either under DSP I or DSP II), the guaranty submitted under this Paragraph will replace the existing guaranty should the RFP Bidder have winning Bids approved by the Commission in this solicitation and PECO will return the existing guaranty upon execution of the guaranty submitted under this Paragraph. Whether or not the RFP Bidder is previously eligible:

- The RFP Bidder or RFP Guarantor must print two (2) originals of the guaranty received from the Independent Evaluator;
- The RFP Guarantor must fill in the Guaranty Amount, which is the maximum aggregate liability under the terms of the guaranty. If an RFP Bidder holds a current Default Service

SMA with PECO (either under DSP I or DSP II), the Guaranty Amount must meet or exceed the lesser of (i) the Unsecured Credit Limit corresponding to the RFP Guarantor lowest Credit Rating most recently published by S&P, Fitch and/or Moody's and the RFP Guarantor TNW Amount; (ii) the sum of the Guaranty Amount of any current guaranty held by PECO and \$600,000 per tranche bid on the RES, SC, and MC products, plus \$300,000 per tranche bid on the LC&I product. If an RFP Bidder does not hold a current Default Service SMA with PECO (from DSP I or DSP II), the Guaranty Amount must meet \$600,000 per tranche bid on the RES, SC, and MC products, plus \$300,000 per tranche bid on the LC&I product.

- The RFP Guarantor must sign two (2) originals of the guaranty.
- The RFP Bidder must submit the two (2) signed originals of the guaranty and the Guaranty Amount must comply with the requirements of this Paragraph.

V.3.3. Enforceability Opinion for an Alternate Guaranty. The Guaranty Process allows a supplier unable to use the Form of Guaranty provided as Exhibit F to the Default Service 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" and the process by which suppliers may obtain approval to use an alternate guaranty is described in Appendix 2. The requirements of this Paragraph only apply to RFP Bidders that obtained approval from PECO to use an alternate guaranty form and that were not previously eligible. 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.

V.3.4. Acknowledgment of Documents Required. The requirements of this Paragraph do not apply to RFP Bidders that are Eligible Default Suppliers. If the Part 2 Form is submitted for early processing, the Officer of an RFP Bidder acknowledges the Default Service SMA documents that are required for the particular circumstances of the RFP Bidder:

- The Officer of an RFP Bidder that is not an Eligible Default Supplier and that relies on its own financial standing acknowledges that two (2) originals of the Default Service SMA are required;

- The Officer of an RFP Bidder that is not an Eligible Default Supplier and that relies on the financial standing of an RFP Guarantor acknowledges that two (2) originals of the Default Service SMA are required and that two (2) originals of the guaranty are required.

V.3.5. The information required by this Section V.3 must be provided exclusively by completing Section 3 of the Part 2 Form, as further explained in Article VII.

#### **V.4. RFP Bidders under an Agency Agreement**

V.4.1. The requirements of this Section V.4 apply only to RFP Bidders submitting a Proposal under an Agency Agreement; other RFP Bidders are not subject to the requirements of this Section V.4.

V.4.2. Officers' Certificate. Whether or not the RFP Bidder is previously eligible, the RFP Bidder must submit an Officers' Certificate substantially in the form of Appendix 6 to these RFP Rules. The Officers' Certificate must be signed by an officer of each Principal.

- 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, the Agency Agreement, and the Default Service SMA submitted with the Part 2 Proposal 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 any Transaction Confirmation pursuant to the Default Service 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.

V.4.3. Signatory to the Default Service SMA. If the Principal does not authorize the RFP Bidder to sign the Default Service SMA or to execute a Transaction Confirmation, such RFP Bidder must name a representative of the Principal who will sign the Default Service SMA and all necessary exhibits as required by Section V.3 and who will be authorized to sign any Transaction Confirmation should such RFP Bidders have winning Bids that are approved by the Commission.

- If such RFP Bidder is not previously eligible, the RFP Bidder must name a representative of a Principal authorized to sign the Default Service SMA and any Transaction Confirmation and provide contact information for this individual (address, phone number, and email address).
- 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 Default Service SMA and any Transaction Confirmation and that the previously submitted contact information remains valid; or: (ii) must update this information.

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 Section V.5.

V.4.5. The information required by this Section V.4 must be provided exclusively by completing Section 4 of the Part 2 Form, as further explained in Article VII.

## **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 Default Service 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.

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 Default Service 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 Default Service SMA on behalf of the Foreign RFP Bidder has the authority to execute the Default Service SMA and that the governing board of such Foreign RFP Bidder has approved the execution of the Default Service 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 Default Service SMA. Exhibit G to the Default Service SMA includes a sample of the legal opinion of outside counsel for the Foreign RFP Bidder that is sufficient.

- If the Foreign RFP Bidder is not previously eligible, such RFP Bidder must submit these fully executed documents 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. If an Eligible Default Supplier relies on the financial standing of an RFP Guarantor and the Guaranty Amount under the guaranty currently held by PECO is equal to the RFP Guarantor's Unsecured Credit Limit, then such

RFP Bidder is exempted from the requirements of this Paragraph. 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 Default Service 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 Default Service SMA on behalf of the RFP Guarantor has the authority to execute the guaranty pursuant to the Default Service SMA and that the governing board of such RFP Guarantor has approved the execution of the guaranty pursuant to the Default Service 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 Default Service SMA. Exhibit G to the Default Service SMA includes a sample of the legal opinion of outside counsel that is sufficient for the Foreign Entity as RFP Guarantor.

- If such RFP Bidder is not previously eligible, such RFP Bidder must submit these fully executed documents 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 Default Service 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 Default Service SMA. Exhibit G to the Default Service SMA includes a sample of the legal opinion of outside counsel that is sufficient for a Foreign Entity as Principal (Seller).

- If such RFP Bidder is not previously eligible, such RFP Bidder must submit these fully executed documents 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 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 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 or sends these materials saved electronically to a CD by overnight delivery service. The Independent Evaluator requires a confirmation of receipt of these materials by fax or 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.2.8.
- 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 VI.1.10.
- 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 Representative of the RFP Bidder. In its Part 1 Proposal, the RFP Bidder elects whether to receive notifications from the Independent Evaluator by email or by fax. In its Part 1 Proposal, the RFP Bidder elects whether documents and manuals from the Independent Evaluator are transmitted by secure file transfer or are saved electronically to a CD that is sent by overnight delivery service. If the RFP Bidder elects to receive communications from the Independent Evaluator by email and secure file transfer, the Representative or the Officer of the RFP Bidder may designate up to three (3) Nominees who will also receive communications from the Independent Evaluator.
- 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 Part 1 Form. RFP Bidders that did not qualify in a previous solicitation under DSP II must use the Standard Part 1 Form provided as Appendix 3 of these RFP Rules 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 provided as Appendix 4. 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 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, make elections on the method that the Independent Evaluator will use to transmit notifications and to transmit documents to the RFP

Bidder, and make general representations as required by Section IV.1, exclusively by completing Section 1 of the Part 1 Form. An RFP Bidder must show compliance with the financial requirements of Section IV.2 exclusively by completing Section 2 of the 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 must provide all information to prepare the Default Service SMA and guaranty (if applicable), as required by Section IV.3, exclusively by completing Section 3 of the Part 1 Form. The RFP Bidder must show that it has all regulatory authorizations necessary for it to legally perform its obligations under the Default Service SMA and the Transaction Confirmations as required by Section IV.4, exclusively by completing Section 4 of the Part 1 Form. An RFP Bidder must make any additional representations required by Section IV.5 exclusively by completing Section 5 of the Part 1 Form. An RFP Bidder submitting a Proposal under an Agency Agreement must provide any additional information required by Section IV.6, exclusively by completing Section 6 of the Part 1 Form. A Foreign RFP Bidder that seeks to be granted unsecured credit under the terms of the Default Service 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.7, exclusively by completing Section 7 of the Part 1 Form.

VII.1.5. The Part 1 Proposal consists of one (1) electronic copy and two (2) hardcopy original Part 1 Forms and one (1) copy of all documents requested in the Part 1 Form and in Article IV of these RFP Rules. One (1) copy of the Part 1 Form, as well as any Draft Letter of Credit, must be submitted electronically in Microsoft Word, either on a CD that is included with the Part 1 Proposal or by email to the Independent Evaluator at [PECOProcurement@nera.com](mailto:PECOProcurement@nera.com). Any documents required by the Part 1 Form must be submitted either electronically (on a CD that is included with the Part 1 Proposal or by email to the Independent Evaluator at [PECOProcurement@nera.com](mailto:PECOProcurement@nera.com)) or in hard copy.

VII.1.6. An RFP Bidder must deliver its hardcopy Part 1 Forms and any documents that the RFP Bidder submits in hardcopy by certified mail, registered mail, hand delivery, or overnight delivery service to the Independent Evaluator by 12 PM (noon) on the Part 1 Date at the following address: NERA - Independent Evaluator, PECO Default Service Program RFPs, 1835 Market Street, Suite 1205,



Philadelphia, PA 19103. Photocopies and facsimiles of the Part 1 Form will not be considered. No late Part 1 Proposals will be accepted under any circumstances.

- VII.1.7. The Independent Evaluator receives and processes the Part 1 Proposals during the Part 1 Window. If a Part 1 Proposal is received by mail or email, the Independent Evaluator sends an acknowledgment to the RFP Bidder consisting of the first page of the Part 1 Form stamped with the time and the date that it was received; the Independent Evaluator sends such acknowledgment by email or fax, at the RFP Bidder's option. If a Part 1 Proposal is hand-delivered, the Independent Evaluator provides an acknowledgment to the individual making the delivery consisting of a photocopy of the first page of the Part 1 Form stamped with the time and the date that it was received. The Independent Evaluator only processes Part 1 Proposals during the Part 1 Window and, if the Part 1 Proposal arrives before the Part 1 Window opens the Independent Evaluator confirms receipt no later than on the first day of the Part 1 Window.
- VII.1.8. If the Part 1 Proposal arrives 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 arrives 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 by fax or email, at the RFP Bidder's option.
- VII.1.9. 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 or fax, at the RFP Bidder's option. 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 Web site 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.1.10. 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 or fax, at the RFP Bidder's option. 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 Web site that will be posted no later than 6 PM on the Part 2 Date.
- 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 or fax, at the RFP Bidder's option. 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.7.2 will receive an evaluation of these documents by the Part 1 Notification Date. The Independent Evaluator sends such review by email or fax, at the RFP Bidder's option. 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.7.3 will receive an evaluation of these documents along by the Part 1 Notification Date. The Independent Evaluator sends such review by email or fax, at the RFP Bidder's option. 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.7.4 will receive an evaluation of these documents by the Part 1 Notification Date. The Independent Evaluator sends such review by email or fax, at the RFP Bidder's option. 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 by fax or email, at the RFP Bidder's option.
- 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. For an RFP Bidder that is required to submit a guaranty with the Part 2 Proposal, the Part 1 Materials also include the guaranty. For an RFP Bidder that is required to submit the Default Service SMA documents with the Part 2 Proposal, the Part 1 Materials also include such documents. 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 or sends a CD to which the Part 1 Materials are saved electronically by overnight delivery service, at the RFP Bidder's option.

VII.1.20. If an RFP Bidder fails to qualify, the Independent Evaluator notifies the RFP Bidder of that fact and returns one (1) copy of the Part 1 Form by overnight delivery service. The Independent Evaluator also sends the notification by fax or email, at the RFP Bidder's option.

VII.1.21. 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 fax or email, at the RFP Bidder's option. The RFP Bidder's Bids are only evaluated if this acknowledgment is received.

VII.1.22. 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 Part 2 Form provided as Appendix 7. Responses to the requirements of Article V that do not use the Part 2 Form will not be considered and the Part 2 Proposal will be considered deficient.

VII.1.23. 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 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 Part 2 Form. An RFP Bidder, if required to confirm that it is submitting documents related to the Default Service SMA by Section V.3, will also be instructed to do so by Section 3 of the Part 2 Form. An RFP Bidder submitting a Proposal under an Agency Agreement must submit additional

documents as required by Section V.4 and as instructed in Section 4 of the Part 2 Form. A Foreign RFP Bidder that seeks to be granted unsecured credit under the terms of the Default Service 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 submitting any additional documents as required by Section V.5 and as instructed by Section 5 of the Part 2 Form. If the RFP Bidder submitted the Part 2 Form for early processing, the Officer of the RFP Bidder will be required to acknowledge that the submission of the documents specified by Article V is required. Responses to the requirements of Article V that do not use the Part 2 Form will not be considered and the Part 2 Proposal will be considered deficient.

VII.1.24. The Part 2 Proposal consists of electronic copy and two (2) hardcopy original Part 2 Forms, the Pre-Bid Letter of Credit, as well as one (1) hard copy of any other document requested of the RFP Bidder in the Part 2 Form and in Article V of these RFP Rules. In particular:

- For RFP Bidders that are not Eligible Default Suppliers, the Part 2 Proposal must include two (2) signed originals of the Default Service SMA, including two (2) signed originals of Exhibit J, the PJM Declaration of Authority.
- For an RFP Bidder relying on the financial standing of an RFP Guarantor, except in the case of an Eligible Default Supplier whose RFP Guarantor already has with PECO a guaranty for its full Unsecured Credit Limit, the Part 2 Proposal also includes two (2) signed originals of the guaranty.
- 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.5 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.1.25. An RFP Bidder must deliver its original hardcopy Part 2 Forms and all documents required by the Part 2 Proposal by certified mail, registered mail, hand delivery or overnight delivery service to the Independent Evaluator by 12 PM (noon) on the Part 2 Date at the following address: NERA - Independent Evaluator, PECO Default Service Program RFPs, 1835 Market Street, Suite 1205, Philadelphia, PA 19103. Photocopies and facsimiles of the Part 2 Form will not be considered. No late Part 2 Proposals will be accepted under any circumstances.
- VII.1.26. Each solicitation has 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 must provide the Part 2 Proposal to the Independent Evaluator by 12 PM (noon) on the Part 2 Date. RFP Bidders also have the option to submit the Part 2 Form during the Part 1 Window for early processing. If a Part 2 Proposal is received by post, the Independent Evaluator sends an acknowledgment to the RFP Bidder consisting of the first page of the Part 2 Form stamped with the time and the date that it was received; the Independent Evaluator sends such acknowledgment by email or fax, at the RFP Bidder's option. If a Part 2 Proposal is hand-delivered, the Independent Evaluator provides an acknowledgment to the individual making the delivery consisting of a photocopy of the first page of the Part 2 Form stamped with the time and the date that it was received. The Independent Evaluator confirms receipt as long as the Part 2 Proposal arrives after the opening of the Part 1 Window. However, Part 2 Proposals are only processed during the Part 1 Window or during the Part 2 Window.
- VII.1.27. If the Part 2 Proposal arrives 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 arrives 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 fax or email, at the RFP Bidder's option.

- VII.1.28. 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 8 of these RFP Rules other than those accepted modifications posted in a single document on the RFP Web site. 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 fax or email, at the RFP Bidder's option.
- VII.1.29. The amount of the Pre-Bid Letter of Credit must be at least \$250,000 per tranche bid on the RES, SC, and MC products, plus \$125,000 per tranche bid on the LC&I product. The Guaranty Amount for RFP Bidders that do not hold a current Default Service SMA with PECO (from DSP I or DSP II) must be equal or exceed \$600,000 per tranche bid on the RES, SC, and MC products, plus \$300,000 per tranche bid on the LC&I product. The Guaranty Amount for RFP Bidders that hold a current Default Service SMA with PECO (from DSP I or DSP II) must be equal or exceed the lesser of: (i) the Guaranty Amount of any current guaranty with PECO under a Default Service SMA, plus an amount equal to \$600,000 per tranche bid on the RES, SC, and MC products, plus \$300,000 per tranche bid on the LC&I product; (ii) the Unsecured Credit Limit of the RFP Guarantor. An Eligible Default Supplier whose RFP Guarantor has a current guaranty with PECO under a Default Service SMA for the RFP Guarantor's Unsecured Credit Limit is not required to submit a guaranty. 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 Guaranty Amount. 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 by fax or email, at the RFP Bidder's option.
- VII.1.30. For an RFP Bidder submitting a Proposal under an Agency Agreement that provides the documents required under Paragraph V.4.1, 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 by fax or email, at the RFP Bidder's option.

VII.1.31. 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 by fax or email, at the RFP Bidder's option.

VII.1.32. 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 by fax or email, at the RFP Bidder's option.

VII.1.33. 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 by fax or email, at the RFP Bidder's option.

VII.1.34. 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.

- VII.1.35. 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.1.36. 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 by fax or email, at the RFP Bidder's option.
- VII.1.37. If the RFP Bidder has not qualified to submit Bids, the Independent Evaluator notifies the RFP Bidder of that fact, returns one (1) copy of the Part 2 Form, and returns all documents submitted for the Part 2 Proposal except for the Pre-Bid Letter of Credit by overnight delivery service. The Independent Evaluator also provides the notification by fax or email, at the RFP Bidder's option.

## **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 9 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 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 by fax or email, at the RFP Bidder’s option.

- VII.3.2. The Independent Evaluator presents the results of the solicitation to the PUC on the first business day after the Bid Date in a confidential report. This confidential report will include the winning Bids determined during the evaluation. The Independent Evaluator also provides this confidential report to PECO and Pennsylvania Office of Consumer Advocate (“OCA”) in redacted format.
- VII.3.3. The PUC 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 PUC does not act within one (1) business day, the winning Bids are deemed to be approved.
- VII.3.4. The Independent Evaluator notifies all RFP Bidders that have approved Bids. RFP Bidders with approved Bids in the current solicitation become Eligible Default Suppliers. When referring specifically to RFP Bidders that were not already Eligible Default Suppliers, the term New Default Suppliers will be used. When referring specifically to RFP Bidders that were already Eligible Default Suppliers, the term Existing Default Suppliers will be used. The Independent Evaluator provides to PECO the name of each Eligible Default Supplier, the number of tranches won by each Eligible Default Supplier in this solicitation, and the Eligible Default Supplier’s price for each product in this solicitation. The price for each such Eligible Default Supplier and for a given product is the average of the Eligible Default Supplier’s approved Bids for that product in this solicitation.
- VII.3.5. If an RFP Bidder is not awarded tranche(s), within three (3) business days of the Bid Date, the Independent Evaluator will destroy the two (2) signed originals of the Default Service SMA, and (if applicable) the two (2) signed originals of the guaranty to the RFP Bidder. The Independent Evaluator will send a notification to such RFP Bidder that the Independent Evaluator does not retain these documents. At the request of the RFP Bidder, the Independent Evaluator will return the signature pages rather than destroying the documents.
- VII.3.6. For New Default Suppliers, PECO executes the two (2) originals of the Default Service SMA, including the PJM Declaration of Authority, by the third business day after the Bid Date. PECO sends one (1) original Default Service SMA to the New Default Supplier.
- VII.3.7. For Eligible Default Suppliers that rely on the financial standing of an RFP Guarantor and that submitted a guaranty in the Part 2 Proposal, PECO executes the two (2) originals of the guaranty by the third business day after the Bid Date. PECO sends one (1) original guaranty to the Eligible

Default Supplier. For an Existing Default Supplier, PECO returns at the same time any existing guaranty that PECO holds for the Eligible Default Supplier.

- VII.3.8. By 12 PM (noon) of the third business day after the Bid Date, PECO partially executes all Transaction Confirmations for each Eligible Default Supplier and sends by fax one (1) copy of each Transaction Confirmation to the Eligible Default Supplier. PECO also sends at that time three (3) partially executed originals of each Transaction Confirmation by overnight delivery service to the Eligible Default Supplier. PECO also provides a copy of Exhibit I with the Transaction Confirmation(s), which specifies the AEPS percentage obligations in effect on the Bid Date for the period covered by each Transaction Confirmation. There is one (1) Transaction Confirmation for each product and for each solicitation.
- VII.3.9. By 2 PM on the fourth business day after the Bid Date, the Eligible Default Supplier executes each Transaction Confirmation and sends a copy by fax of all Transaction Confirmations to PECO. The Officer of the Eligible Default Supplier named in the Part 1 Proposal or the Designee is expected to sign the Transaction Confirmation(s). If these individuals are unavailable to sign the Transaction Confirmation(s), the Eligible Default Supplier will advise PECO of this fact, will name another individual to sign the Transaction Confirmation(s), and will confirm that this individual is an officer, a director, or an individual otherwise authorized to undertake contracts (including the Default Service SMA) and bind the Eligible Default Supplier. The Eligible Default Supplier also sends to PECO two (2) originals of each Transaction Confirmation by overnight delivery service.
- VII.3.10. As provided in the PUC'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 Web site.
- VII.3.11. Within fifteen (15) days of the close of the solicitation, 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.3.12. As provided in the PUC'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 Web site:

<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, Section IV.6, and Section IV.7 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



11 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 Default Service SMA or any Transaction Confirmation. Nothing herein may be construed to bind PECO unless and until the Commission has approved winning Bids, and the Default Service SMA and each Transaction Confirmation with an approved Eligible Default Supplier or Default Supplier has been executed and is effective. Once effective, it is the Default Service 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.