

**PECO Energy Company**  
**Default Service Program**  
**Request for Proposals**  
**For Full Requirements Products**

Fall 2009

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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 Default Service Program Supply Master Agreement (“Default Service SMA”). The Default Service SMA is attached as Appendix 1 to this document.

I.1.2. PECO Energy Company (“Company” or “PECO”) has 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 includes this Request for Proposals (“RFP”) for the procurement of full requirements service on a fixed-price basis (“Fixed-Price Default Supply”) as well as for the procurement of full requirements service with energy priced to the PJM day-ahead spot market (“Spot-Price Default Supply”). Default Supply is procured for each of four groupings of customers and for various supply periods. This competitive bidding process also includes a second RFP for the procurement of blocks of energy. Whenever necessary to avoid confusion, these two RFPs will be referred to as the “Full Requirements RFP” and the “Block Energy RFP” respectively.

I.1.3. This RFP consists of a total of thirteen (13) documents. This main document is called the “RFP Rules”. The following documents are appended to the RFP Rules:

- Appendix 1: Default Service SMA
- Appendix 2: Subsequent Solicitations
- Appendix 3: Load Caps Examples
- Appendix 4: Guaranty Process
- Appendix 5: Standard Part 1 Form
- Appendix 6: Short Part 1 Form
- Appendix 7: Part 2 Form
- Appendix 8: Sample Bid Form
- Appendix 9: Chief Financial Officer Attestation
- Appendix 10: Officers’ Certificate (for RFP Bidders under an Agency Agreement)
- Appendix 11: Standard Pre-Bid Letter of Credit
- Appendix 12: Confidentiality Statement

- I.1.4. There are six (6) solicitations pursuant to this RFP. The RFP will select electricity suppliers to provide Default Supply for the period January 1, 2011 through May 31, 2013, and for a portion of the Company's requirements for the period June 1, 2013 through May 31, 2014. Each solicitation will be identified by the season and year during which it will take place. Solicitations will be held in the Fall 2009, Spring 2010, Fall 2010, Fall 2011, and Winter 2012. The first solicitation was held in Spring 2009 and procured Fixed-Price Default Supply for periods of 17 months and 29 months starting on January 1, 2011. The next three solicitations will also procure Fixed-Price Default Supply for the same supply periods. In addition, the Spring 2010 solicitation will procure Spot-Price Default Supply for a period of 17 months starting on January 1, 2011. The final two solicitations, in the Fall 2011 and Winter 2012, will procure Fixed-Price Default Supply for periods of 12 months and 24 months, starting on June 1, 2012.
- I.1.5. The schedule in these RFP Rules refers only to this Fall 2009 solicitation. The tentative schedule for future solicitations is provided in Appendix 2. 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. Provisions of this RFP allow suppliers that have completed the Part 1 Proposal or Part 2 Proposal in a previous solicitation under this RFP to take part in an abbreviated qualification process for this 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 cure inconsistencies in the provisions of this RFP. 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.1.6. A “Class” is a grouping of customers on PECO’s existing rate schedules. There are four Classes: Residential (“R”)<sup>1</sup>, Small Commercial (“SC”), Medium Commercial (“MC”), and Large Commercial and Industrial (“LC&I”). The specific rate schedules for each Class are shown in the following table:

Table I-1. Customer Classes

Class	Customers Included	Rate Schedule	Description
Residential	All residential customers	R RH OP	Residence Service Residential Heating Service Off-Peak Service
Small Commercial	Non-residential customers in rate schedules GS, HT, and PD with Peak Load Contribution < 100kW and customers in rate schedules AL, TL, POL, SLE, SLS and SLP	GS HT PD AL TL POL SLE SLS SLP	General Service High-Tension Power Primary -Distribution Power Alley Lighting Traffic Lighting Service Private Outdoor Lighting Street Lighting Customer-Owned Facilities Street Lighting-Suburban Counties Street Lighting in City of Philadelphia
Medium Commercial	Non-residential customers with Peak Load Contribution Between 100kW and 500 kW	GS HT PD	General Service High-Tension Power Primary -Distribution Power
Large Commercial & Industrial	Non-residential customers with Peak Load Contribution > 500kW	GS HT PD EP	General Service High-Tension Power Primary -Distribution Power Electric Propulsion

I.1.7. A Default Service customer for the purposes of these RFP Rules is a PECO retail customer who has not chosen to receive service from an Electric Generation Supplier (“EGS”). 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 shopping

<sup>1</sup> The term “R Class” as used in the RFP document refers to the Residential Class, which includes rate schedules R, RH and OP. This term does not refer to the residential service rate schedule.

customer (i.e., a customer served by an EGS) in the R, SC, MC, or LC&I Class 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. Customers in the LC&I Class ("LC&I customers") who do not receive service from an EGS will receive Default Service with energy priced to the PJM day-ahead spot market. However, for an initial 12-month period beginning January 1, 2011, LC&I customers may elect to receive Default Service on a fixed-price basis. To elect this option, LC&I customers will be required to express their interest in advance of the Spring 2010 solicitation during which supply for this option will be procured. After the solicitation is held and the price for this service is known, LC&I customers who expressed interest will have a limited window of thirty (30) calendar days to confirm their decision to receive Default Service at the fixed-price rate. Only these LC&I customers will be eligible to take Default Service at the fixed-price rate and all other LC&I customers, including LC&I customers returning to Default Service after having been served by an EGS, will receive Default Service on an hourly spot-price basis.

I.1.9. PECO will serve 25% of the R Class Default Service Load, referred to as the "PECO Share". PECO will use Block Energy Supply to meet 20% of the expected seasonal energy requirements of the R Class (80% of the PECO Share). PECO will balance the blocks of energy and load of the PECO Share on an hourly basis through the hourly spot market energy in PJM. PECO will purchase all other necessary products to serve the PECO Share, including without limitation ancillary services and capacity, in PJM-administered markets. For the PECO Share, PECO will make purchases necessary to meet its obligations under the Alternative Energy Portfolio Standards Act, 73 P.S. §§ 1648.1-1648.8, ("AEPS Act"), as well as other Orders, regulations and rules that may be promulgated by the PUC with respect to the AEPS. The rates of Default Service customers in the R Class will be determined on the basis of the prices determined

through this RFP for Fixed-Price Default Supply for the Class, the prices determined through the Block Energy RFP, and PECO's additional purchases to serve its 25% share of the Default Service Load for the R Class. PECO has made available a spreadsheet tool of its rate design for R customers as well as a description of its rate mitigation plan.

- I.1.10. The rates of Default Service customers in the SC and MC Classes will be determined on the basis of the prices determined through this RFP for Fixed-Price Default Supply for the Class, the prices determined through this RFP for Spot-Price Default Supply for the Class, and the percentage of spot purchases for the Class. The percentages of Spot-Price Default Supply are: 10% for the SC Class and 15% for the MC Class. PECO will make available a complete description of its rate mitigation plan for SC and MC customers.
- I.1.11. An electric supplier participating in this RFP bids to provide Default Supply, either Fixed-Price Default Supply or Spot-Price Default Supply or both, for one or more Classes, and for one or more supply periods. An electric supplier selected through this RFP to provide Default Supply for a particular Class and approved by the Pennsylvania Public Utility Commission ("PUC" or "Commission") becomes a Default Supplier for that Class. A Default Supplier may bid and be selected to provide Default Service for one or more Classes. An electric supplier participating in this Full Requirements RFP may also participate in the Block Energy RFP for blocks of energy.
- I.1.12. 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.1.13. 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 Full Requirements RFP for a solicitation is an RFP Bidder (Full Requirements). An entity that submits any part of a response to the Block Energy RFP for a solicitation is an RFP Bidder (Block Energy). In the documents for this Full Requirements RFP, "RFP Bidder" means "RFP Bidder (Full Requirements)" unless specifically stated otherwise.

I.1.14. A Proposal consists of three (3) parts. The first part of the Proposal (“Part 1 Proposal”) is the RFP Bidder’s response to the qualification standards described in Article IV of these RFP Rules. RFP Bidders that qualify pursuant to a successful Part 1 Proposal may submit the second part of the Proposal (“Part 2 Proposal”). The Part 2 Proposal, described in detail in 0, includes the signed Default Service SMA and financial support for the RFP Bidder’s offers. RFP Bidders that present a successful Part 1 Proposal and Part 2 Proposal may submit the third part of the Proposal, which consists of the RFP Bidder’s price offers.

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

I.2.1. The Default Service Load for each Class is the load of PECO’s retail customers within that Class, excluding customers who have chosen to receive service from an EGS.

I.2.2. The Default Service Load for the R Class is divided into two portions: the Fixed-Price Default Load and the PECO Share, to be served from Fixed-Price Default Supply and by the Company respectively. The Fixed-Price Default Load is 75% and the PECO Share is 25% of the Default Service Load for the R Class.

I.2.3. The Default Service Load for each of the remaining Classes is divided into two portions: the Fixed-Price Default Load and the Spot-Price Default Load, to be served from Fixed-Price Default Supply and Spot-Price Default Supply, respectively. For the SC Class, the Fixed-Price Default Load is 90% and the Spot-Price Default Load is 10% of the Default Service Load; and for the MC Class, the Fixed-Price Default Load is 85% and the Spot-Price Default Load is 15% of the Default Service Load. For the LC&I Class, the Fixed-Price Default Load for the period January 1, 2011 through December 31, 2011 is determined by the LC&I customers who elect the fixed-price option and who do not elect to receive service from an EGS. The Spot-Price Default Load for the LC&I Class is the remaining portion of the Default Service Load. Starting on January 1, 2012, the Fixed-Price Default Load for the LC&I Class is 0% and the Spot-Price Default Load is 100% of the Default Service Load. The Default Suppliers for the Spot-Price



Default Service for LC&I customers will be responsible for any change in Spot-Price Default Load that occurs on January 1, 2012.

I.2.4. Fixed-Price Default Load for each Class is divided into tranches. A tranche in a Class represents a fixed percentage of the Default Load for that Class. A Fixed-Price Default Supplier serving one tranche in a particular Class provides full-requirements service for the percentage of that Class' Default Load represented by one tranche. The total number of tranches of Fixed-Price Default Load placed into each Class is based on that Class' annual Peak Load Contribution ("PLC") on the PECO system in accordance with PJM as well as the percentage of Default Load represented by Fixed-Price Default Load. The MW-Measure is calculated as the annual PLC for the Fixed-Price Default Load of the Class divided by the total number of tranches. This figure is calculated for reference purposes only. The percentage size and MW-Measure of each tranche are shown in the following table.

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

Class	Total PLC (MW)	Fixed-Price PLC (MW)	Fixed-Price Tranches	Fixed-Price Tranche Size	Fixed-Price MW-Measure
Residential	3,161	2,371	47	1.60%	50.44
Small Commercial	1,411	1,058	25	3.60%	42.33
Medium Commercial	1,126	944	19	4.47%	44.43
Large Commercial & Industrial	TBD	TBD	TBD	TBD	TBD

I.2.5. The number of tranches for the LC&I Class will be announced prior to the Spring 2010 solicitation and will depend upon the number of customers who indicate interest in electing the fixed-price option.

I.2.6. Spot-Price Default Load for each of the SC, MC, and LC&I Classes is also divided into tranches, each representing a fixed percentage of the Default Load for that Class. A Spot-Price Default Supplier serving one tranche in a particular Class provides full-requirements service for the percentage of that Class' Default Load represented by one tranche. The total number of tranches of Spot-Price Default Load placed into

each Class is based on that Class' annual PLC on the PECO system in accordance with PJM as well as the percentage of Default Load represented by Spot-Price Default Load. The MW-Measure is calculated as the annual PLC for the Spot-Price Default Load of the Class divided by the total number of tranches. This figure is calculated for reference purposes only. The percentage size and MW-Measure of each tranche are shown in the following table.

**Table I-3. Number of Tranches and Size of a Tranche for Spot-Price Default Load**

Class	Total PLC (MW)	Spot-Price PLC (MW)	Spot-Price Tranches	Spot-Price Tranche Size	Spot-Price MW-Measure
Small Commercial	1,388.00	138.8	3	3.33%	46.27
Medium Commercial	1,100.00	165	3	5.00%	55.00
Large Commercial & Industrial		TBD	TBD	TBD	TBD

- I.2.7. The actual Fixed-Price Default Load or Spot-Price Default Load for each 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. RFP Bidders are responsible for evaluating the uncertainties associated with Default Service Load for each of the Classes during the supply periods.
- I.2.8. A product for purposes of this RFP is defined by three characteristics: a) a product is either Fixed-Price Default Supply or Spot-Price Default Supply; b) a product is for a given class; and c) a product is for a given supply period. For example, the Fixed-Price Default Supply for the R Class for the supply period January 1, 2011 through May 31, 2012 is a product.
- I.2.9. An RFP Bidder can offer to supply one or several products. 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. The number of tranches bid on a product is the number of tranches of that product for which a Bid is provided.

I.2.10. In the Fall 2009 solicitation, PECO procures Fixed-Price Default Supply for the R, SC and MC Classes. For the R Class, the Fixed-Price Default Supply products are for a 17-month supply period or for a 29-month supply period starting on January 1, 2011. For the SC Class and MC Class, the products are for a 17-month supply period starting on January 1, 2011. Concurrently, the Block Energy RFP solicits Bids for 12-month blocks of energy that will be used by the Company to serve the PECO Share. The table below provides the available tranches for these Fixed-Price Default Supply products.

Table I-4. Fall 2009 Available Tranches

Type	Class	Supply Period	Available Tranches
Fixed-Price	R	January 1, 2011 to May 31, 2012	8
Fixed-Price	R	January 1, 2011 to May 31, 2013	3
Fixed-Price	SC	January 1, 2011 to May 31, 2012	6
Fixed-Price	MC	January 1, 2011 to May 31, 2012	3

I.2.11. Each Class has a Load Cap, which is a limit on the number of tranches of Default Supply that an RFP Bidder can bid and serve for that Class. The Load Cap ensures that there will be a diversified pool of Default Suppliers for each Class. The Load Cap for a Class and an RFP Bidder is set so that the customers of that Class have no more than a 65% exposure to any one Default Supplier at any given time.

I.2.12. For the Fall 2009 solicitation, the Load Cap for the R Class is a limit on the number of tranches that an RFP Bidder can bid and is two-fold. First, over both the Spring 2009 and Fall 2009 solicitations there are a total of 7 tranches available for supply over 29 months, giving a Maximum Load Cap of 4 tranches for the January 2011 - May 2013 product. Second, supply over the 17 month period January 2011 - May 2012 can be obtained by winning tranches from the 17 month product and the 29 month product over both the Spring 2009 and Fall 2009 solicitations. Over both solicitations there are a total of 23 tranches available that provide for supply over the January 2011 - May 2012 period, giving a Maximum Load Cap of 14 tranches for both the 17 month and 29

month products combined over both solicitations. The Load Caps for an RFP Bidder that had winning Bids under this RFP in the Spring 2009 solicitation are the Maximum Load Caps less the amount that was previously won in the Spring 2009 solicitation. All RFP Bidders that do not have winning Bids under this RFP in the Spring 2009 solicitation can bid up to the available number of tranches for the R Class. More information on the calculation of the Load Cap is provided in Appendix 3. The Independent Evaluator will send to each previously qualified RFP Bidder that had winning Bids under this RFP in the Spring 2009 solicitation its Load Caps for the Fall 2009 solicitation in its Initial Status Notification, which is further described in Paragraph I.3.1 below.

- I.2.13. For the Fall 2009 solicitation, the Load Caps for the SC Class and the MC Class will be the same for all RFP Bidders and are given in Table I-5 below. In the Spring 2010 and future solicitations, the Load Cap will be set individually for each RFP Bidder to take into account the RFP Bidder's winning Bids under this RFP in previous solicitations for each of these Classes. The Load Cap for a Class and an RFP Bidder will be set so that the customers of that Class have no more than a 65% exposure to any one Default Supplier at any given time.

Table I-5. Fall 2009 Available Tranches

Type	Class	Supply Period	Available Tranches	Load Cap
Fixed-Price	SC	January 1, 2011 to May 31, 2012	6	3
Fixed-Price	MC	January 1, 2011 to May 31, 2012	3	1

- I.2.14. In the event that PECO is unable to obtain Default Supply for all tranches in a solicitation, unfilled tranches of a product will be placed for re-bid in the next solicitation in which the same product is scheduled to be purchased (if there is such a solicitation). Products in the Fall 2009 solicitation are also procured in the Spring 2010 and Fall 2010 solicitations and thus any unfilled tranches will be up for re-bid in the Spring 2010 solicitation. However, other products, such as the products in the Fall

2010 solicitation, are not scheduled to be procured again in a subsequent solicitation. If there is no subsequent solicitation in which a product with unfilled tranches is scheduled to be purchased, PECO will assume responsibility for the unfilled tranches as a PJM Load Serving Entity (“LSE”) at the start of the supply period and will acquire the necessary supply through PJM-administered markets. For products with a duration of 24 months or more, the unfilled tranches for a Class will be placed for re-bid in the first solicitation after the start of the supply period. The tranches will be added to the supply to be purchased for the product for the same Class with a supply period that expires on the original expiration date.

- I.2.15. 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 Exelon Generation Company (a PECO affiliate).

### **I.3. Submission of Proposals**

- I.3.1. The Independent Evaluator will send to each previously qualified RFP Bidder an Initial Status Notification no later than ten (10) days prior to the opening of the Part 1 Window. The Initial Status Notification will include the contact information on file with the Independent Evaluator. As part of their Part 1 Proposal, previously qualified RFP Bidders must correct or confirm the contact information provided by the Independent Evaluator in the Initial Status Notification. For previously qualified RFP Bidders that had winning Bids under this RFP in a previous solicitation, the Initial Status Notification will include the RFP Bidder’s Load Caps for the Fall 2009 solicitation.
- I.3.2. PECO and the Independent Evaluator will hold a Guaranty Process, described in more detail in Appendix 4. 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. An alternate guaranty form is approved according to specific criteria provided in Appendix 4. In particular, the alternate guaranty form must not have a monetary limit and must provide credit protections to PECO and its customers that are substantially similar to the credit protections provided to PECO by the Form of Guaranty. 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. All approved modifications will be posted in a single document on the RFP Web site in advance of the Part 1 Proposal. 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. Each RFP Bidder that relies on the financial standing of an RFP Guarantor must use the relevant section of the Part 1 Form to make its elections to incorporate any of the approved modifications to the Form of Guaranty.

- I.3.3. RFP Bidders who did not qualify in a previous solicitation must use the Standard Part 1 Form provided as Appendix 5 of these RFP Rules to respond to the qualification standards described in Article IV of these RFP Rules. Previously qualified RFP Bidders may participate in an abbreviated qualification by using the Short Part 1 Form provided as Appendix 6 of these RFP Rules to respond to the qualification standards described in Article IV of these RFP Rules. 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.pecoprocedure.com](http://www.pecoprocedure.com).
- I.3.4. The Part 1 Proposal for an RFP Bidder consists of three (3) original completed Part 1 Forms as well as one (1) copy of all documents required by the Part 1 Form. These

documents can be submitted either in hard copy, or in electronic format. The qualification standards include the submission of contact information, general representations, and the submission of financial information for a creditworthiness assessment.

- I.3.5. RFP Bidders must use the Part 2 Form provided as Appendix 7 of these RFP Rules to respond to the Part 2 Proposal requirements described in 0 of these RFP Rules. The Part 2 Proposal consists of three (3) original completed Part 2 Forms as well as all other documents required by the Part 2 Form, in the number of originals specified in 0. The Part 2 Proposal requirements include additional representations, submission of the Default Service SMA for RFP Bidders that did not have winning Bids under this RFP in a previous solicitation, and a Pre-Bid Letter of Credit in an amount sufficient to support the Bids.
- I.3.6. RFP Bidders must 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 8 of these RFP Rules.
- I.3.7. The schedule for this solicitation is provided in Table II-1 and will be updated if necessary on the RFP Web site [www.pecoprocurement.com](http://www.pecoprocurement.com). Part 1 Proposals are received and processed during a specific timeframe, the Part 1 Proposal Window. The last day of the Part 1 Proposal Window is called the Part 1 Date. Part 1 Proposals must be received by noon on the Part 1 Date. All times in this RFP are Eastern Prevailing Times ("EPT") unless specifically noted. An RFP Bidder that submits a Part 1 Proposal during the Part 1 Proposal Window and who is qualified pursuant to its Part 1 Proposal may submit a Part 2 Proposal. Each RFP Bidder that submits a Part 1 Proposal will be notified whether it has qualified to submit a Part 2 Proposal no later than 6:00 PM on the Part 1 Notification Date.
- I.3.8. Part 2 Proposals are received and processed during a specific timeframe, the Part 2 Proposal Window. The last day of the Part 2 Proposal Window is called the Part 2 Date. Part 2 Proposals must be received by noon on the Part 2 Date. An RFP Bidder

who is qualified pursuant to its Part 1 Proposal and who submits a successful Part 2 Proposal may submit Bids. Each RFP Bidder that submits a Part 2 Proposal will be notified whether it has qualified to submit Bids no later than 6:00 PM on the Part 2 Notification Date.

I.3.9. The day on which Bids are submitted is called the Bid Date. Each RFP Bidder's Bids must be received between 10:00 AM and noon on the Bid Date. All Bids are evaluated on the Bid Date.

I.3.10. For each solicitation, the Independent Evaluator will present to the PUC on the first business day after the Bid Date the results of that solicitation in a confidential report to the PUC. The results of a solicitation may include the results for full-requirements products under this RFP as well as the results for Block Energy Supply under the Block Energy RFP. This confidential report will include the winning Bids determined during the evaluation. The Independent Evaluator will notify each RFP Bidder whether each of its Bids is or is not being presented to the PUC as a winning Bid by 6:00 PM on the Bid Date.

I.3.11. 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.

#### **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 PUC becomes a Default Supplier for that Class. A Default Supplier may be providing Fixed-Price Default Supply for the R Class. A Default Supplier may be providing Fixed-Price Default Supply, or Spot-Price Default Supply, or both for any one or several of the 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.

- I.4.3. Fixed-Price Default Suppliers for a Class will serve the Company's Fixed-Price Default Load for that Class. Spot-Price Default Suppliers for each of the SC, MC, or LC&I Classes will serve the Company's Spot-Price 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. PECO will transfer to Default Suppliers the Auction Revenue Rights ("ARRs") for the period January 1, 2011 through May 31, 2011 to which PECO is entitled pursuant to PJM Agreements, provided that such rights are related to the Default Service being provided.
- I.4.5. Default Suppliers are also responsible for providing Alternate Energy Credits ("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, excluding the Company's obligations associated with the Company serving the PECO Share. Default Suppliers will be required to participate in the PJM Generation Attribute Tracking System ("PJM-EIS GATS") to transfer AECs to PECO. 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. To the extent that PECO has obtained AECs from separate AEPS procurement(s) approved by the Commission, PECO may reduce the amount of AECs that Default Suppliers must provide. Prior to any procurement, PECO will inform RFP Bidders of the amounts of AECs allocated for this purpose.
- I.4.7. 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 RFP Bidder and for that product.

## 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 for the RFP. 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.pecoprocedure.com](http://www.pecoprocedure.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, 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 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 company-specific historical data to assist prospective suppliers. Links to the PJM Interconnection LLC ("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 their 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 following is the schedule for the Fall 2009 solicitation. 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 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. RFP Schedule**

### **Fall 2009 Solicitation**

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Prospective suppliers participate in the Guaranty Process	Friday, July 10, 2009
RFP documents issued	Monday, July 20, 2009
Approved modifications to Form of Guaranty posted	Tuesday, July 28, 2009
Part 1 and Part 2 Forms issued	Wednesday, July 29, 2009

Part 1 Proposal Window Opens	Tuesday, August 25, 2009
Decision on alternate guaranty forms	Friday, July 31, 2009
<i>Bidder Information Session</i>	<i>Wednesday, August 5, 2009</i>
Part 1 Date (Part 1 Proposal Window Closes)	Tuesday, September 1, 2009
Part 1 Notification Date	Friday, September 4, 2009
Part 2 Proposal Window Opens	Tuesday, September 8, 2009
Bid Submission Training	Thursday, September 10, 2009
Part 2 Date (Part 2 Proposal Window Closes)	Tuesday, September 15, 2009
Part 2 Notification Date	Friday, September 18, 2009
Bid Date (Bids are Due)	Monday, September 21, 2009
Independent Evaluator provides its report to the PUC	Tuesday, September 22, 2009
PUC Decision	No later than Wednesday, September 23, 2009
<i>If Bids are approved by the PUC:</i>	
PECO executes the Default Service SMA	Within three business days of the Bid Date
PECO sends Transaction Confirmations by overnight delivery service	By noon of the fourth business day after the Bid Date
Default Supplier meets the creditworthiness requirements and executes all Transaction Confirmation(s)	By 2:00 PM on the fifth business day after the Bid Date

## 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 the Fall 2009 solicitation by submitting a Part 1 Proposal that fulfills all requirements described in Article IV may submit a Part 2 Proposal.
- III.1.2. 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.1.3. For a given solicitation, all representations and certifications required by this RFP must be made by a single individual. This individual must be an 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 as Officer of the RFP Bidder and must provide full contact information for this individual. As a requirement of the Part 2 Proposal, this individual must sign the Default Service SMA and must sign the Transaction Confirmation(s) if any of the RFP Bidder's Bids are approved by the Commission.
- III.1.4. The Independent Evaluator will send to each RFP Bidder that submitted a successful Part 1 Proposal in a previous solicitation an Initial Status Notification no later than ten (10) days prior to the opening of the Part 1 Window. Such RFP Bidders may participate in an abbreviated qualification process.
- III.1.5. Each RFP Bidder must comply with all Part 1 Proposal requirements described in Article IV. Section IV.1 describes the contact information and representations required. Section IV.2 describes financial requirements, including the process for RFP Bidders to propose modifications to the standard credit instruments. 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 qualification process in which previously qualified RFP Bidders may participate.

III.1.6. 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.1.7. Each RFP Bidder must comply with all Part 2 Proposal requirements as described in 0. 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 0 explains the abbreviated process in which RFP Bidders that submitted a successful Part 2 Proposal in a previous solicitation may participate.

- III.1.8. 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.1.9. Proposals that do not adhere to the terms and conditions of this RFP, or that do not fulfill all requirements of Article IV, 0, and Article VI of this RFP, or that are not submitted in accordance with the process of Article VII, will not be considered.
- III.1.10. The submission of a Part 1 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.1.11. 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**

To qualify to submit a Part 2 Proposal, an RFP Bidder must comply with all Part 1 Proposal requirements described in this Article IV. An RFP Bidder that has qualified to submit a Part 2 Proposal in a previous solicitation may participate in an abbreviated qualification process. Each of the Sections of this Article IV explains the abbreviated qualification process in which such previously qualified RFP Bidders may participate. In this Article IV, “previously qualified RFP Bidder” means an RFP Bidder that has qualified to submit a Part 2 Proposal in a previous solicitation held under this RFP.

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

#### **IV.1.1. Contact Information for the RFP Bidder.**

- Contact information for the RFP Bidder, namely the RFP Bidder’s legal name and address, is a requirement of the Part 1 Proposal.
- An RFP Bidder that has not previously qualified must submit this contact information in its Part 1 Proposal.
- A previously qualified RFP Bidder must correct or confirm the contact information for the RFP Bidder in the Initial Status Notification, which includes the contact information for the RFP Bidder currently on file with the Independent Evaluator. The Independent Evaluator will send to a previously qualified RFP Bidder an Initial Status Notification no later than ten (10) days prior to the opening of the Part 1 Window.

#### **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 in the Part 1 Proposal. Should the RFP Bidder submit a Part 2 Proposal, the individual named as Officer of the RFP Bidder will sign the Default Service SMA. Should the RFP Bidder have Bids approved by the Commission, the individual named as Officer of the RFP Bidder will sign the Transaction Confirmation(s).

- An RFP Bidder that has not previously qualified must submit the following contact information in its Part 1 Proposal: the name, title, and full contact information (address, phone number, fax number, email address) of an Officer of the RFP Bidder.
- A previously qualified RFP Bidder must confirm the contact information for the Officer of the RFP Bidder in the Initial Status Notification. If the Officer of the RFP Bidder previously named will not be available to make all representations of this solicitation, or if the Officer of the RFP Bidder will not be available to sign the Transaction Confirmations should the RFP Bidder have winning Bids in this solicitation, the RFP Bidder must name another Officer for the Fall 2009 Solicitation.

#### IV.1.3. Representative of the RFP Bidder.

- The Representative is the point of contact if the Independent Evaluator has questions on the documentation provided by the RFP Bidder in response to this RFP or requires additional information. The Independent Evaluator sends all correspondence related to the solicitation to the Representative, including confidential information required to submit Bids on the Bid Date. The Independent Evaluator, for the purposes of this RFP, will communicate exclusively with the Representative or the Officer. Communications with the Representative will typically be done via fax and by overnight delivery service. The RFP Bidder is urged to provide a fax number at which the Representative

will be able to receive faxes from the Independent Evaluator in a secure and timely manner.

- If the RFP Bidder has not previously qualified, the Officer of the RFP Bidder must name a Representative of the RFP Bidder in the Part 1 Proposal. The RFP Bidder must provide the name, title, and full contact information (address, phone number, fax number, email address) of the individual named by the Officer of the RFP Bidder who will serve as Representative of the RFP Bidder for purposes of this solicitation.
- A previously qualified RFP Bidder must confirm or correct the contact information for the Representative of the RFP Bidder in the Initial Status Notification. The Officer of the RFP Bidder may name a new Representative by providing all the required contact information.

#### IV.1.4. Representations by the Officer of the RFP Bidder.

- The Officer of the RFP Bidder, whether or not the RFP Bidder has previously qualified, must certify that:
  - (1) 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;
  - (2) the Part 1 Proposal will remain valid and remain in full force and effect until six (6) business days after the Bid Date;
  - (3) all information provided in the Part 1 Proposal is true and accurate to the best of the Officer's knowledge and belief;
  - (4) 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;

IV.1.5. 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.
- A previously qualified RFP Bidder will receive an Initial Status Notification that will identify the entity on whose financial standing the RFP Bidder last relied. 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. The RFP Bidder must confirm or change this information. If the RFP Bidder changes this information, the RFP Bidder will be required to resubmit all information required by this Section IV.2 as 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.

- Whether or not the RFP Bidder has previously qualified, an RFP Bidder 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 must be submitted to fulfill this requirement. If the SEC Form 10-Q 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 9 of these RFP Rules. If such financial information is unavailable for the RFP Bidder, the RFP Bidder must clearly state this fact.
- Whether or not the RFP Bidder has previously qualified, an RFP Bidder 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 must be submitted to fulfill this requirement. If the SEC Form 10-Q 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 9 of these RFP Rules.

#### 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"). For each rating agency that rates the entity, the RFP Bidder may submit a print-out of the agency's Web site or other documentation from the agency providing the name of the rating agency, the type of rating, and the rating of the entity. The Independent Evaluator will use any such information provided by the RFP Bidder to verify its own assessment of the agency's credit ratings. If no ratings are available for the entity, the RFP Bidder must clearly state this fact.
- A previously qualified RFP Bidder will receive an Initial Status Notification that will provide the credit ratings on file for the entity on whose financial standing the RFP Bidder last relied. 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. The RFP Bidder must certify that this information remains up-to-date and accurate, or provide updated information with respect to any or all of the credit ratings. If the RFP Bidder provides updated 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. For each such update, the RFP Bidder may submit a print-out of the agency's Web site or other documentation from the agency providing the name of the rating agency, the type of rating, and the rating of the entity.

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**

IV.3.1. Standard 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. This Pre-Bid Letter of Credit must be in the form of the Standard Pre-Bid Letter of Credit provided as Appendix 11 to these RFP Rules or must incorporate only modifications that have been approved by PECO and the Independent Evaluator. The Standard Pre-Bid Letter of Credit for the Fall 2009 Solicitation has been modified from the Standard Pre-Bid Letter of Credit used in the Spring 2009 Solicitation.
- 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 IE@pecoprocurement.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.

- 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 [IE@pecoprocurement.com](mailto:IE@pecoprocurement.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 who are not Default Suppliers.
- Such RFP Bidder must, in its Part 2 Proposal, submit two (2) signed original Default Service SMA, including all exhibits. The Independent Evaluator sends the Default Service SMA with the Part 1 Notification to each RFP Bidder that qualified pursuant to a successful Part 1 Proposal and that is not a Default Supplier.
- 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 will receive an Initial Status Notification that will provide all information needed to prepare the Default Service SMA for execution, including all exhibits, and the last elections of the RFP Bidder. 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. The RFP Bidder must confirm that the information is up-to-date and accurate, or the RFP Bidder must submit updated information so that the Independent Evaluator may prepare the Default Service SMA for execution with completely accurate information.

IV.3.4. The requirements of this Paragraph apply only to RFP Bidders who are not Default Suppliers. The Officer of the RFP Bidder, whether or not the RFP Bidder has previously qualified, 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 Guaranty Process is explained in Paragraph I.3.1 and in Appendix 4. Such RFP Bidder may participate in the Guaranty Process, whether or not the RFP Bidder has previously qualified.
- Such RFP Bidder must, in its 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 Independent Evaluator sends the prepared guaranty with the Part 1 Notification to each such RFP Bidder that qualified pursuant to a successful Part 1 Proposal and the RFP Bidder submits two (2) signed originals of that prepared guaranty with its Part 2 Proposal. This process applies to all such RFP Bidders, including those that have previously qualified and those RFP Bidders that are Default Suppliers.
- 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 will receive an Initial Status Notification that will provide the information needed to prepare the guaranty as submitted by such RFP Bidder in the most recent solicitation under this RFP for which the RFP Bidder submitted a successful Part 1 Proposal. The RFP Bidder must

confirm that the information is up-to-date and accurate, or the RFP Bidder must submit updated information so that the Independent Evaluator may prepare the guaranty for execution. Further, the RFP Bidder must submit its elections for any or all of the modifications to the Form of Guaranty newly approved for the current solicitation.

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. The requirements of this Section do not apply to RFP Bidders that are Default Suppliers.

IV.4.2. FERC Authorization.

- The Officer of such RFP Bidder, whether previously qualified or not, 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 the RFP Bidder becomes a Default Supplier.

IV.4.3. PJM Load Serving Entity.

- A Default Supplier must become a Load Serving Entity (“LSE”) by the start of the supply period (currently January 1, 2011).
- 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 (namely January 1, 2011) 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.4.4. 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. The Officer of an RFP Bidder that has not previously qualified must, in the Part 1 Proposal, certify that:

- the Officer of the RFP Bidder 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 this RFP, regardless of the outcome of the solicitation or the outcome of such Proposal.

IV.5.2. The Officer of each RFP Bidder, whether previously qualified or not, must, in its Part 1 Proposal, certify that the RFP Bidder is not part of a bidding agreement, a joint venture for purposes of participating in any solicitation for this Full Requirements RFP or for the Block Energy RFP, a bidding consortium, or any other type of agreement related to bidding in any solicitation of these RFPs. An RFP Bidder (Full Requirements) found to be acting in concert with another RFP Bidder (Full Requirements or Block Energy) 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. Additional Requirements.

- An RFP Bidder that is submitting a Proposal under an Agency Agreement must comply with additional requirements in its Proposal.
- Such RFP Bidder that has not previously qualified 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.
- A previously qualified RFP Bidder must correct or confirm the name of each Principal provided in the Initial Status Notification. A previously qualified RFP Bidder must either confirm that there have been no changes to the Agency Agreement or must submit one (1) copy of the amended Agency Agreement with its Part 1 Proposal, either in hard copy or electronically on a CD.

IV.6.3. Certifications.

- The Officer of such RFP Bidder, whether previously qualified or not, must certify that the Officer of the RFP Bidder has the authority to bind the Principal(s).
- The Office of such RFP Bidder that has not previously qualified must acknowledge that an Officers’ Certificate, substantially in the form of Appendix 10 to these RFP Rules, must be provided with the Part 2 Proposal.

IV.6.4. Such RFP Bidder, whether previously qualified or not, may, but is not required to, submit with its Part 1 Proposal 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 IV.7 apply only to: (1) Foreign RFP Bidders that have not previously qualified and that seek to be granted unsecured credit under the terms of the Default Service SMA; or (2) RFP Bidders that have not previously qualified and 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.

IV.7.2. Additional requirements for Foreign RFP Bidders.

- In addition to supplying all required information and documents under Section IV.2, a Foreign RFP Bidder may provide 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.
- In its Part 1 Proposal, 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.
- A Foreign RFP Bidder may, but is not required to, submit with its Part 1 Proposal a draft of these documents for evaluation. 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 a Foreign RFP Bidder submits a draft of these documents for evaluation, the Independent Evaluator will provide this

evaluation to the Foreign 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.

- In addition to supplying all required information and documents under Section IV.2, an RFP Bidder relying on the financial standing of a Foreign Guarantor may provide any additional evidence of creditworthiness for the Foreign Entity 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.
- In its Part 1 Proposal, the Officer of such RFP Bidder must acknowledge that the following additional documents are required with the Part 2 Proposal for the 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.

- Such RFP Bidder may, but is not required to, submit with its Part 1 Proposal a draft of these additional documents. Exhibit G to the Default Service SMA includes a sample for the legal opinion of outside counsel for the RFP Guarantor that is sufficient. 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.

- In addition to supplying all required information and documents under Section IV.2, an RFP Bidder submitting a Proposal under an Agency Agreement with a Foreign Entity as Principal may provide any additional evidence of creditworthiness for the Foreign Entity 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.
- In its Part 1 Proposal, 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 its 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.



- Such RFP Bidder may, but is not required to, submit with its Part 1 Proposal a draft of these additional documents. Exhibit G to the Default Service SMA includes a sample of the legal opinion of outside counsel for the Principal (Seller) that is sufficient. 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 IV.7 must be provided exclusively by completing Section 7 of the Part 1 Form, as further explained in Article VII. The information required by this Section IV.6 is not required of a previously qualified Foreign RFP Bidder or a previously qualified RFP Bidder that relied on the financial standing of the same Foreign Entity in a previous solicitation.

## ARTICLE V. Part 2 Proposal Requirements

To qualify to submit Bids, an RFP Bidder must comply with all Part 2 Proposal requirements described in this 0. An RFP Bidder that has qualified to submit Bids in a previous solicitation may participate in an abbreviated process for the Part 2 Proposal. Each of the Sections of this 0 explains the abbreviated process in which RFP Bidders that were previously qualified to submit Bids may participate. In this 0, “previously qualified RFP Bidder” means an RFP Bidder that has qualified to submit Bids in a previous solicitation held under this RFP.

### V.1. Contact Information and Representations

#### V.1.1. Contact Information for the RFP Bidder.

- Confirmation of the contact information for the RFP Bidder submitted with the Part 1 Proposal is a requirement of the Part 2 Proposal.
- All RFP Bidders, whether previously qualified or not, will receive from the Independent Evaluator, along with the Part 1 Notification, a record of the contact information contained in the Part 1 Proposal. An RFP Bidder must confirm in its Part 2 Proposal that the record of the contact information is correct. If it is not correct, the RFP Bidder must provide corrected contact information.
- If the RFP Bidder must change the individual who serves as Officer of the RFP Bidder, the RFP Bidder must re-submit by the Part 2 Date its Part 1 Form in its entirety naming the new individual as Officer of the RFP Bidder, and that Officer of the RFP Bidder must make all representations and certifications required in this RFP for this solicitation.

V.1.2. Representations of the Officer of the RFP Bidder.

- The Office of each RFP Bidder, whether previously qualified or not, must make certain certifications.
- The Officer of the RFP Bidder must certify that:
  - (1) the Part 2 Proposal will remain valid and remain in full force and effect until six (6) business days after the Bid Date;
  - (2) all information provided in the Part 2 Proposal is true and accurate to the best of the Officer of the RFP Bidder's knowledge and belief;
  - (3) the RFP Bidder is bidding independently and that it has no knowledge of any information concerning a Proposal being submitted by another RFP Bidder (Full Requirements or Block Energy) in response to this solicitation or any future solicitation in this Full Requirements RFP or in the Block Energy RFP. Such information includes, but is not limited to: the fact that another RFP Bidder (Full Requirements or Block Energy) is submitting a Proposal in response to the Full Requirements RFP or the Block Energy RFP; the Bids by another RFP Bidder (Full Requirements) in this or in a subsequent solicitation under this RFP; the price offers by another RFP Bidder (Block Energy) in this or in a subsequent solicitation under the Block Energy RFP; the number of tranches bid by another RFP Bidder (Full Requirements) for any product in this or in a subsequent solicitation under this RFP; the number of blocks bid by another RFP Bidder (Block Energy) for any product in this or in a subsequent solicitation under the Block Energy RFP; the estimation by another RFP Bidder (Full Requirements) of the value of a tranche of a product; the estimation by another RFP Bidder (Block Energy) of the value of a block of a product; the estimation by another RFP Bidder (Full Requirements) of the risks associated with providing supply under the Default Service SMA; the estimation by another RFP Bidder (Block Energy) of the risks associated with providing supply under the Default Service Program

Block Energy Supply Master Agreement (“Block Energy SMA”); the preference of another RFP Bidder (Full Requirements or Block Energy) for bidding on specific products in this or in a subsequent solicitation under one or both of the RFPs; 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;

- (4) the RFP Bidder has maintained and will continue to maintain the confidentiality of its Proposal during the preparation of the Proposal, including in communicating with its financial institution for the purpose of preparing the Pre-Bid Letter of Credit or in communicating with advisors, if any;
- (5) 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 one or both of the RFPs (Full Requirements RFP or Block Energy RFP), or on the contents of the Proposal that another RFP Bidder (Full Requirements or Block Energy) would be willing to submit in response to one or both of the RFPs. 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.

(6) 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.

(7) if the Commission approves some or all of the RFP Bidder's Bids, the Officer of the RFP Bidder will execute all Transaction Confirmation(s) required by the Commission's decision under the Default Service SMA by 2:00 PM of the fourth business day after the Bid Date.

#### V.1.3. Confirmation of Receipt of Information

- All RFP Bidders, whether previously qualified or not, must confirm receipt of the information necessary to submit Bids.
- The Officer of the RFP Bidder must confirm that the RFP Bidder has received all information from the Independent Evaluator for the submission of Bids, including the RFP Bidder's username, password, and security codes.
- The Officer of the RFP Bidder further certifies that the information was received intact and that no one but authorized personnel of the RFP Bidder has had access to this information.

V.1.4. 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. All RFP Bidders, whether previously qualified or not, must comply with the requirements of this Section V.2.

- V.2.2. The RFP Bidder must provide an executed Pre-Bid Letter of Credit, drawn for the account of the RFP Bidder, in an amount of \$250,000 per tranche bid, and acceptable to PECO. A single Pre-Bid Letter of Credit is submitted even if the RFP Bidder bids on several of the products in this RFP. However, if the RFP Bidder is also submitting a Proposal under the Block Energy RFP, the RFP Bidder must submit two separate Pre-Bid Letters of Credit.
- V.2.3. The RFP Bidder must either use the Standard Pre-Bid Letter of Credit provided in Appendix 11 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.2.4. 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 Confirmation(s).
- V.2.5. 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 a particular 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.2.6. The Officer of the RFP Bidder confirms that the Pre-Bid Letter of Credit is included with the Part 2 Proposal 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.**

- An RFP Bidder that is a Default Supplier is exempted from the requirements of this Section V.3.1.
- RFP Bidders that are not Default Suppliers, whether previously qualified or not, must comply with the requirements of this Section V.3.1.
- 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. The Independent Evaluator sends, along with the Part 1 Notification, the Default Service SMA to each RFP Bidder that qualified pursuant to a successful Part 1 Proposal. The Default Service SMA is provided electronically on a CD. The RFP Bidder must print two (2) originals of the Default Service SMA. The Officer of the RFP Bidder must sign each of the two (2) signature pages of the originals of the Default Service SMA as well as each of the two (2) originals of Exhibit J, the PJM Declaration of Authority. The RFP Bidder must include both originals of the Default Service SMA, including all exhibits, with its Part 2 Proposal. For the avoidance of doubt, the Officer of the RFP Bidder for purposes of this paragraph is the individual designated as Officer of the RFP Bidder in the Part 1 Proposal and whose contact information is confirmed in the Part 2 Proposal.

### V.3.2. Guaranty.

- All RFP Bidders, whether previously qualified or not, must comply with the requirements of this Section V.3.2 if relying on the financial standing of an RFP Guarantor.
- Using the information provided by the RFP Bidder in its Part 1 Proposal in response to the requirements of Paragraph IV.3.5, the Independent Evaluator prepares for execution the guaranty. The Independent Evaluator sends, along with the Part 1 Notification, the guaranty to each RFP Bidder that qualified pursuant to a successful Part 1 Proposal and that relies on the financial standing of an RFP Guarantor. The guaranty is provided electronically on a CD. The RFP Bidder or RFP Guarantor must print two (2) signed originals of the guaranty provided by the Independent Evaluator. The RFP Guarantor fills in the maximum aggregate liability under the terms of the guaranty (the "Guaranty Amount") and signs the guaranty.
- The Guaranty Amount for an RFP Bidder that is a Default Supplier or a Block Energy Supplier equals or exceeds the sum of: i) the Guaranty Amount of any current guaranty held by PECO under the Default Service SMA or the Block Energy SMA; and ii) the total number of tranches bid (for all products) times \$600,000.
- The Guaranty Amount for an RFP Bidder that is neither a Default Supplier nor a Block Energy Supplier is equal to the total number of tranches bid (for all products) times \$600,000.
- The guaranty submitted under this Paragraph by an RFP Bidder who is a Default Supplier and who has winning Bids approved by the Commission in this solicitation will replace the existing guaranty. The existing guaranty will be returned to the RFP Bidder when PECO executes the new guaranty, which occurs within three (3) business days of the Bid Date.



V.3.3. Enforceability Opinion for an Alternate Guaranty.

- RFP Bidders may apply to obtain approval to use an alternate guaranty under the process more fully described in Appendix 4.
- An RFP Bidder that has not previously qualified and that has obtained approval from PECO to use an alternate guaranty form must provide, with its Part 2 Proposal, an executed enforceability opinion for this alternate guaranty form on the letterhead of a law firm of national standing.
- A previously qualified RFP Bidder that has obtained approval from PECO to use an alternate guaranty form in a previous solicitation need not re-submit an executed enforceability opinion.

V.3.4. Confirmation of Documents Provided.

- The Officer of an RFP Bidder who is not a Default Supplier confirms that all Default Service SMA documents, including the guaranty (if necessary), required by this Section V.3 are included with the Part 2 Proposal must be provided exclusively by completing Section 3 of the Part 2 Form, as further explained in Article VII.
- The Officer of an RFP Bidder who relies on the financial standing of a Guarantor and who is a Default Supplier confirms that the guaranty is included with the Part 2 Proposal exclusively by completing Section 3 of the Part 2 Form, as further explained in Article VII.
- The Officer of an RFP Bidder who does not rely the financial standing of a Guarantor and who is a Default Supplier is not required to confirm submission of documents under this Paragraph.

**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. Such RFP Bidders, whether previously qualified or not, must comply with the requirements of this Section V.4.

#### V.4.2. Officers' Certificate

- Such RFP Bidder must submit, with its Part 2 Proposal, an Officers' Certificate substantially in the form of Appendix 10 to these RFP Rules. The Officers' Certificate must be signed by an officer of each Principal.
- This 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).
- Such RFP Bidder who has been previously qualified will have presented an Officers' Certificate acceptable to PECO at the time of the previously successful Part 2 Proposal. Such RFP Bidder can be assured that an Officers' Certificate in the same form will remain acceptable to PECO.

#### V.4.3. Representative.

- If no representative of such RFP Bidder is authorized to execute a Transaction Confirmation pursuant to the Default Service SMA, such RFP Bidder must name a representative of a Principal that is so authorized. This individual must then

also be the individual who signs the Default Service SMA and all necessary exhibits as required by Section V.3.

- Such RFP Bidder that has not previously qualified must either name a representative of the RFP Bidder who is authorized to execute a Transaction Confirmation pursuant to the Default Service SMA, or name a representative of a Principal that is so authorized.
- Such previously qualified RFP Bidder will receive an Initial Status Notification that will name the representative of the RFP Bidder authorized to execute a Transaction Confirmation pursuant to the Default Service SMA, or name a representative of a Principal that is so authorized. Such RFP Bidder must either confirm that the information is accurate and up-to-date, or correct the information by naming the representative of the RFP Bidder or the Principal that is so authorized.

V.4.4. An RFP Bidder who 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 Officer of the RFP Bidder confirms that the documents and information required by this Section V.4 are included with the Part 2 Proposal 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. Foreign RFP Bidder.

- A Foreign RFP Bidder receives, with its Part 1 Notification, a provisional creditworthiness assessment that presumes the receipt of the following fully executed additional documents with the Part 2 Proposal: (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.

- A Foreign RFP Bidder that has not previously qualified 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 and the documents are sufficient, the Independent Evaluator includes in the Part 2 Notification a confirmation of the creditworthiness assessment provided with the Part 1 Notification. 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 does not submit these documents, or if these documents are not sufficient, 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.
- A Foreign RFP Bidder that has previously qualified and that submitted these additional documents, fully executed, and deemed sufficient in a previous solicitation, must confirm that these documents remain up-to-date and valid for

the Independent Evaluator to confirm the creditworthiness assessment provided with the Part 1 Notification. If the previously qualified RFP Bidder cannot confirm that these additional documents are up-to-date and valid, or if the previously qualified RFP Bidder had not previously submitted additional documents, fully executed, and deemed sufficient in a previous solicitation, the RFP Bidder must submit these additional documents, fully executed for the Independent Evaluator to confirm the creditworthiness assessment provided with the Part 1 Notification. If the Independent Evaluator can confirm the creditworthiness assessment provided with the Part 1 Notification, the Independent Evaluator includes this confirmation in the Part 2 Notification 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. 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. Foreign RFP Guarantor: Required Documents

- An RFP Bidder that relies on the financial standing of an RFP Guarantor that is a Foreign Entity 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 with the Part 2 Proposal: (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.

- Such RFP Bidder that has not previously qualified 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 submits these fully executed documents and these documents are sufficient, the Independent Evaluator includes in the Part 2 Notification a confirmation of the creditworthiness assessment provided with the Part 1 Notification. Exhibit G to the Default Service SMA includes a sample of the legal opinion of outside counsel for the RFP Guarantor that is sufficient. If the RFP Bidder does not submit these documents, or if these documents are not sufficient, 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.
- Such RFP Bidder that has previously qualified and that submitted these additional documents, fully executed, and deemed sufficient in a previous solicitation, must confirm that these documents remain up-to-date and valid for the Independent Evaluator to confirm the creditworthiness assessment provided with the Part 1 Notification. If the previously qualified RFP Bidder cannot confirm that these additional documents are up-to-date and valid, or if the

previously qualified RFP Bidder had not previously submitted additional documents, fully executed, and deemed sufficient in a previous solicitation, such RFP Bidder must submit these additional documents, fully executed for the Independent Evaluator to confirm the creditworthiness assessment provided with the Part 1 Notification. If the Independent Evaluator can confirm the creditworthiness assessment provided with the Part 1 Notification, the Independent Evaluator includes this confirmation in the Part 2 Notification 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. 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. Agency Agreement with a Foreign 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 fully executed documents with the Part 2 Proposal: (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.

- If such RFP Bidder that has not previously qualified submits these fully executed documents and these documents are sufficient, the Independent Evaluator includes in the Part 2 Notification a confirmation of the creditworthiness assessment provided with the Part 1 Notification. Exhibit G to the Default Service SMA includes a sample of the legal opinion of outside counsel for the Principal that is sufficient. If the RFP Bidder does not submit these documents, or if these documents are not sufficient, the Independent Evaluator provides with the Part 2 Notification a revised creditworthiness assessment that states that the RFP Bidder and its Principal(s) are not granted unsecured credit.
- Such RFP Bidder that has previously qualified and that submitted these additional documents, fully executed, and deemed sufficient in a previous solicitation, must confirm that these documents remain up-to-date and valid for the Independent Evaluator to confirm the creditworthiness assessment provided with the Part 1 Notification. If the previously qualified RFP Bidder cannot confirm that these additional documents are up-to-date and valid, or if the previously qualified RFP Bidder had not previously submitted these additional documents, fully executed, and deemed sufficient in a previous solicitation, such RFP Bidder must submit these additional documents, fully executed for the Independent Evaluator to confirm the creditworthiness assessment provided with the Part 1 Notification. If the Independent Evaluator can confirm the creditworthiness assessment provided with the Part 1 Notification, the Independent Evaluator includes this confirmation in the Part 2 Notification 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. Otherwise, the Independent Evaluator provides with the Part 2 Notification a revised creditworthiness assessment that states that the RFP Bidder and its Principal(s) are not granted unsecured credit.

V.5.5. Confirmation of Documents Provided.



- The Officer of the RFP Bidder, if required to submit the additional documents detailed in this Section V.5, confirms that all documents are included with the Part 2 Proposal exclusively by completing Section 5 of the Part 2 Form, as further explained in Article VII.
- The Officer of the RFP Bidder that has previously qualified and that submitted these additional documents, fully executed, and deemed sufficient in a previous solicitation provides confirmation that the additional documents provided in the previous solicitation remains up-to-date and accurate exclusively by completing Section 5 of the Part 2 Form, as further explained in Article VII.

## ARTICLE VI. Bid Submission

An RFP Bidder who is qualified pursuant to its Part 1 Proposal and who submits a successful Part 2 Proposal may submit Bids. The Bid submission procedure is the same for all RFP Bidders, regardless of whether they have previously qualified to submit Bids and regardless of whether they are current Default Suppliers. However, RFP Bidders who had winning Bids under this RFP in a previous solicitation may be subject to different Load Caps, as specified in Paragraph VI.1.9 below.

- VI.1.1. The Independent Evaluator sends the electronic Bid Form to each RFP Bidder qualified pursuant to a successful Part 1 Proposal. The Independent Evaluator sends at the same time instructions for completion of the Bid Form, for encryption of the Bid Form, and for electronic transfer of the completed Bid Form to the Independent Evaluator, instructions for fax submission of the 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 sends the Part 1 Notification and these materials saved electronically to a CD by overnight delivery service within two (2) business days of the Part 1 Notification Date.
- 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 with its Part 1 Notification. An RFP Bidder must encrypt its Bid Form and submit the Bid Form to the Independent Evaluator through a secure electronic transfer according to the instructions provided by the Independent Evaluator with its Part 1 Notification. 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.

- VI.1.3. An RFP Bidder may print the Bid Form and fax it to the Independent Evaluator only in case of technical difficulties while using the secure electronic transfer. The Independent Evaluator will provide instructions for such a contingency. These instructions will include a representative of the RFP Bidder phoning the Independent Evaluator to advise the Independent Evaluator of the use of a fax transmission and to provide authenticating information.
- VI.1.4. All Bid Forms must be received between 10:00 AM and noon (EPT) 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 their Bids. Any such additional instructions, contingencies, or conditions will be ignored.
- VI.1.9. Load Caps.
- An RFP Bidder may submit Bids for one or more tranches for one or several products, subject to the restrictions of this paragraph. The number of tranches for which an RFP Bidder submits a Bid for a Class cannot exceed the Load Cap for that Class. A Load Cap for a Class is a maximum number of tranches that an RFP Bidder can bid and win for that Class to help ensure diversity of the supplier base serving that Class.

- For the Fall 2009 Solicitation, the Load Caps for the SC Class and the MC Class will be the same for all RFP Bidders and are provided in Section I.2.
- All RFP Bidders that do not have winning Bids under this RFP in a previous solicitation can bid up to the available number of tranches for the R Class.
- For an RFP Bidder that is a Default Supplier for the R Class, the Independent Evaluator will send to each such RFP Bidder its supplier-specific Load Caps for the R Class in its Initial Status Notification.
- More information on the calculation of the Load Cap is provided in Appendix 3.

VI.1.10. Bids will be evaluated on a price-only basis, in accordance with the process described in Article VII.

## **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, will communicate exclusively with the Representative or the Officer of the RFP Bidder. Any notification or other written communication given by the Independent Evaluator to an RFP Bidder will be delivered by overnight delivery service at the address provided for the Representative or sent by fax at the fax number provided for the Representative. Any such 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 6:00 PM on a business day or occurs on a day that is not a business day, receipt will be deemed to occur at 9:00 AM on the following business day. The RFP Bidder is urged to provide a fax number at which the Representative will be able to receive faxes from the Independent Evaluator in a secure and timely manner.

VII.1.2. The Representative or the Officer of the RFP Bidder may request that the Independent Evaluator send a notification or other written communication to another

representative of the RFP Bidder. Such a request must be made in writing to the Independent Evaluator.

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 who did not qualify in a previous solicitation must use the Standard Part 1 Form provided as Appendix 5 of these RFP Rules to respond to the qualification standards described in Article IV of these RFP Rules. Previously qualified RFP Bidders may participate in an abbreviated qualification by using the Short Part 1 Form provided as Appendix 6 of these RFP Rules to respond to the qualification standards described in Article IV of these RFP Rules. The generic term “Part 1 Form” refers either to the Standard Part 1 Form or 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 the contact information and make general representations as required by Section IV.1, including information regarding the Officer of the RFP Bidder and the Representative, 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. 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.1.5. The Part 1 Proposal consists of three (3) 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. Article IV provides all instructions on whether a given document may be provided in hard copy or electronically.
- VII.1.6. An RFP Bidder must deliver its Part 1 Proposal by certified mail, registered mail, hand delivery, or overnight delivery service to the Independent Evaluator by 12:00 PM (noon EPT) 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 Proposal Window. If a Part 1 Proposal is received by post, the Independent Evaluator faxes an acknowledgment to the RFP Bidder consisting of a photocopy of the first page of the Part 1 Form stamped with the time and the date that it was received. If a Part 1 Proposal is hand-delivered, the Independent Evaluator provides an acknowledgment 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 confirms receipt regardless of whether or not the Part 1 Proposal arrives during the Part 1 Proposal Window; however, Part 1 Proposals are only processed during the Part 1 Proposal Window.

- VII.1.8. If the Part 1 Proposal arrives before noon on any business day during the Part 1 Proposal 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 noon on any business day during the Part 1 Proposal Window prior to the Part 1 Date, the Independent Evaluator sends the acknowledgment along with the initial review by noon of the next business day.
- 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 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 Proposal Window. By noon on the day the Part 2 Proposal 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 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 6:00 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 along with the Part 1 Notification. 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 along with the Part 1 Notification. 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 acting 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 with the Part 1 Notification. 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 Principal as a Foreign Entity and that submits a draft of any of the documents described in Paragraph IV.7.4 will receive an evaluation of these documents along with the Part 1 Notification. 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 (Full Requirements or Block Energy). The Independent Evaluator may request additional information to ascertain that the RFP Bidder is bidding independently of other RFP Bidders (Full Requirements or Block Energy). An



RFP Bidder that is not bidding independently of another RFP Bidder (Full Requirements or Block Energy) 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 noon on the Part 1 Date, or until 6:00 PM on the business day following the business day during which such a notice is faxed to the 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 1 Proposal may be rejected.

VII.1.17. An RFP Bidder is qualified to submit a Part 2 Proposal if its Part 1 Proposal is received on or before noon on the Part 1 Date, if its Part 1 Proposal is complete, and if its Part 1 Proposal fully complies with the qualification standards of Article IV of these RFP Rules.

VII.1.18. An RFP Bidder that submits a Part 1 Proposal will be notified by fax whether it has qualified to submit a Part 2 Proposal for the solicitation no later than 6:00 PM on the Part 1 Notification Date. Within two (2) business days of the Part 1 Notification Date, the Independent Evaluator sends by overnight delivery service the Part 1 Notification, a record of the contact information contained in the Part 1 Proposal, as well as a CD to which are saved: (i) the Bid Form; (ii) instructions for filling out and encrypting the Bid Form; (iii) instructions for the electronic transfer of the completed Bid Form from the RFP Bidder to the Independent Evaluator; (iv) instructions for fax submission of the Bids in case of technical difficulties with the electronic transfer; (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 relies on the financial standing of an RFP Guarantor, the Guaranty will also be saved to the CD. For all RFP Bidders that are not Default Suppliers, the Default Service SMA will also be saved to the CD.

VII.1.19. If an RFP Bidder fails to qualify, the Independent Evaluator notifies the RFP Bidder of that fact by fax and by overnight delivery service. The Independent Evaluator returns one (1) copy of the Part 1 Form by overnight delivery service.

VII.1.20. The exclusive method of responding to the requirements for Part 2 Proposals listed in 0 of these RFP Rules is the use of the Part 2 Form provided as Appendix 7 of these RFP Rules. Responses to the requirements of 0 that do not use the Part 2 Form will not be considered and the Part 2 Proposal will be considered deficient.

VII.1.21. 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 confirm that it is submitting the Pre-Bid Letter of Credit as required by Section V.2 exclusively by completing 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, must do so by completing Section 3 of the Part 2 Form. An RFP Bidder submitting a Proposal under an Agency Agreement must confirm that it is submitting any additional documents required by Section V.4 exclusively by completing 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 must indicate whether it is submitting any additional documents required by Section V.5 exclusively by completing Section 5 of the Part 2 Form. Responses to the requirements of 0 that do not use the Part 2 Form will not be considered and the Part 2 Proposal will be considered deficient.

VII.1.22. The Part 2 Proposal consists of three (3) 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 0 of these RFP Rules. In particular:

- For RFP Bidders that are not Default Suppliers, the Part 2 Proposal must include two (2) signed originals of the Default Service SMA.

- For an RFP Bidder relying on the financial standing of an RFP Guarantor, 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.
- An RFP Bidder submitting a Proposal under an Agency Agreement and relying on the financial standing of a Principal that is a Foreign Entity, a Foreign RFP Bidder, and an RFP Bidder relying on the financial standing of an RFP Guarantor that is a Foreign Entity also must include any documents required by Section V.5 as a condition of being granted unsecured credit. These documents may include (1) an executed legal opinion of outside counsel, and (2) a sworn certificate of the corporate secretary.

VII.1.23. An RFP Bidder must deliver its Part 2 Proposal by certified mail, registered mail, hand delivery or overnight delivery service to the Independent Evaluator by 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.1.24. The Independent Evaluator receives and processes the Part 2 Proposals during the Part 2 Proposal Window. If a Part 2 Proposal is received by post, the Independent Evaluator faxes an acknowledgment to the RFP Bidder consisting of a photocopy of the first page of the Part 2 Form stamped with the time and the date that it was received. If a Part 2 Proposal is hand-delivered, the Independent Evaluator provides an acknowledgment 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 regardless of whether or not the Part 2 Proposal arrives during the Part 2 Proposal Window; however, Part 2 Proposals are only processed during the Part 2 Proposal Window.

- VII.1.25. If the Part 2 Proposal arrives before noon on any business day during the Part 2 Proposal 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 noon on any business day during the Part 2 Proposal Window prior to the Part 2 Date, the Independent Evaluator sends the acknowledgment along with the initial review by noon of the next business day.
- VII.1.26. An RFP Bidder's Part 2 Proposal is automatically deficient if the Pre-Bid Letter of Credit proposes or includes modifications to the Standard Pre-Bid Letter of Credit included as Appendix 11 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 noon on the Part 2 Date, or until 6:00 PM on the second business day following the business day during which such a notice is faxed to the RFP Bidder, whichever comes later, to respond.
- VII.1.27. The amount of the Pre-Bid Letter of Credit is equal to the total number of tranches bid times \$250,000. The Guaranty Amount for RFP Bidders that are neither Default Suppliers nor Block Energy Suppliers must be equal or exceed the total number of tranches bid (for all products) times \$600,000. The Guaranty Amount for RFP Bidders who are neither Default Suppliers nor Block Energy Suppliers must be equal or exceed the Guaranty Amount of any current guaranty with PECO under a Default Service SMA or a Block Energy SMA, plus an amount equal to the total number of tranches bid (for all products) times \$600,000. 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 noon on the Part 2 Date, or until 6:00 PM on the second business day following the business day

during which such a notice is faxed to the RFP Bidder, whichever comes later, to respond.

VII.1.28. For an RFP Bidder submitting a Proposal under an Agency Agreement that provides the documents required under Paragraph V.4.2 and Paragraph V.5.4, PECO and the Independent Evaluator will determine whether the documents provided are sufficient, without any liability or obligation to the RFP Bidder or its Principal(s). If the documents are insufficient and the RFP Bidder receives notice from the Independent Evaluator that its Part 2 Proposal is deficient in this regard, the RFP Bidder has until noon on the Part 2 Date, or until 6:00 PM on the second business day following the business day during which such a notice is faxed to the RFP Bidder, whichever comes later, to respond. If the documents required under Paragraph V.4.2 remain insufficient, the RFP Bidder's Part 2 Proposal may be rejected. If the documents required under Paragraph V.5.4 remain insufficient, the Independent Evaluator provides with the Part 2 Notification a revised creditworthiness assessment that states that the RFP Bidder and its Principal(s) 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 sufficient.

VII.1.29. 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 sufficient, without any liability or obligation to the Foreign RFP Bidder. 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 noon on the Part 2 Date, or until 6:00 PM on the second business day following the business day during which such a notice is faxed to the RFP Bidder, whichever comes later, to respond. If the documents remain insufficient, 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 sufficient.

VII.1.30. For an RFP Bidder relying on the financial standing of an RFP Guarantor that is a Foreign Entity and that submits the documents required under Paragraph V.5.3, PECO and the Independent Evaluator will determine whether the documents provided are sufficient, without any liability or obligation to the RFP Bidder or the RFP Guarantor. 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 noon on the Part 2 Date, or until 6:00 PM on the second business day following the business day during which such a notice is faxed to the RFP Bidder, whichever comes later, to respond. If the documents remain insufficient, 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 sufficient.

VII.1.31. With the exceptions noted in Paragraphs VII.1.26 to VII.1.30, 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 noon on the Part 2 Date, or until 6:00 PM on the business day following the business day during which such a notice is faxed to the 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.1.32. An RFP Bidder's Part 2 Proposal is successful if its Part 2 Proposal is received on or before 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 0 of these RFP Rules.

VII.1.33. An RFP Bidder that submits a Part 2 Proposal will be notified whether it has qualified to submit Bids no later than 6:00 PM on the Part 2 Notification Date.

VII.1.34. If the RFP Bidder has not qualified to submit Bids, the Independent Evaluator notifies the RFP Bidder of that fact by fax and by overnight delivery service. The Independent Evaluator returns one (1) copy of the Part 2 Form and all documents except for the Pre-Bid Letter of Credit.

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

VII.2.1. An RFP Bidder must submit its Bids in accordance with the instructions received from the Independent Evaluator with its Part 1 Notification and in accordance with the requirements of Article VI. An RFP Bidder's Bids must be received between 10:00 AM and noon on the Bid Date. The requirements for Bid submission are the same for all RFP Bidders, regardless of whether they qualified to submit Bids in a previous solicitation.

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 8 of these RFP Rules. The Bid Form must be filled

out completely, encrypted, and transferred according to 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 an encrypted Bid Form through a secure file transfer interface. The RFP Bidder must use the username and the password provided by the Independent Evaluator to access the secure interface. The RFP Bidder must use a security code provided by the Independent Evaluator to encrypt the file.
- VII.2.4. An RFP Bidder that must resort to submitting its Bid Form by fax because of technical difficulties 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 a fax transmission to submit Bids and to provide authenticating information.
- VII.2.5. All Bid Forms must be received between 10:00 AM and 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. An RFP Bidder may only submit its Bid Form once unless the RFP Bidder is invited to resubmit its Bid Form by the Independent Evaluator pursuant to the circumstances described in Paragraph VII.2.8 or Paragraph VII.2.11. If an RFP Bidder resubmits its Bid Form under these circumstances and the Bid Form is received between 10:00 AM and noon on the Bid Date, the resubmitted Bid Form automatically supersedes all previously submitted Bid Form(s). If an RFP Bidder resubmits a Bid Form under any other circumstances, only the Bid Form that was first submitted between 10:00 AM and noon on the Bid Date will be evaluated.
- 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. 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 fax, and should phone the Independent Evaluator immediately.

- VII.2.8. If the Bid Form received by the Independent Evaluator is incomplete or inconsistent, 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 10:00 AM and noon on the Bid Date. If the corrected Bid Form is not received between 10:00 AM and 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 10:00 AM and 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 contacts each RFP Bidder that has submitted Bids by 6:00 PM on the Bid Date and identifies the RFP Bidder's Bids that are being identified to the Commission as winning Bids. This notification occurs by telephone with a written acknowledgment by fax upon request by the RFP Bidder.
- VII.2.11. 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 10:00 AM and 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 10:00 AM and 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 Bidders, the Independent Evaluator will first modify the Bid Form from the RFP Bidder whose Bid Form is received last.

VII.2.12. 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.2.11. 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.2.13. 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.2.14. 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 lowest Bids on that product.

VII.2.15. The tie-breaking procedure will award tranches in the following order: (1) to the RFP Bidder who, 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 who, 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 who, 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.2.16. An RFP Bidder acting in concert with another RFP Bidder (Full Requirements or Block Energy) 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.2.17. 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 will present the results of the solicitation to the PUC on the first business day after the Bid Date in a confidential report. The results of a solicitation may include the results for full-requirements products under this RFP as well as the results for Block Energy Supply under the Block Energy RFP. This confidential report will include the winning Bids determined during the evaluation.

VII.3.2. 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.3.3. The Independent Evaluator will notify all RFP Bidders that have approved Bids. Such RFP Bidders are called Default Suppliers. When referring specifically to RFP Bidders that were not already Default Suppliers, the term New Default Suppliers will be used. When referring specifically to RFP Bidders that were already Default Suppliers, the term Existing Default Suppliers will be used. The Independent Evaluator provides to PECO the name of each Default Supplier, and for each such supplier, the number of

tranches won by the Default Supplier in this solicitation and the Default Supplier's price for each product in this solicitation. The price for each such supplier and for a given product is the average of the supplier's approved Bids for that product in this solicitation.

- VII.3.4. If the RFP Bidder is not awarded tranche(s), the Independent Evaluator will return within three (3) business days of the Bid Date 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.
- VII.3.5. 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.
- VII.3.6. For Default Suppliers that rely on the financial standing of an RFP Guarantor, PECO executes the two (2) originals of the guaranty provided by the Default Supplier with its Part 2 Proposal by the third business day after the Bid Date. PECO sends one (1) original guaranty to the Default Supplier. For an Existing Default Supplier, PECO returns at the same time any existing guaranty that PECO holds for the Default Supplier.
- VII.3.7. By 12:00 PM (noon) of the third business day after the Bid Date, PECO partially executes all Transaction Confirmations for each Default Supplier and sends by fax one (1) copy of each Transaction Confirmation to the Default Supplier. PECO also sends at that time three (3) partially executed originals of each Transaction Confirmation by overnight delivery service to the 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, for each Default Supplier, and for each solicitation.
- VII.3.8. By 2:00 PM on the fourth business day after the Bid Date, the Default Supplier executes each Transaction Confirmation and sends a copy by fax of all Transaction

Confirmations to PECO. The Default Suppliers also sends to PECO two (2) originals of each Transaction Confirmation by overnight delivery service.

#### **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 12 to these RFP Rules prior to evaluation of any portion of the Proposals. The list of all signatories is available to an RFP Bidder upon request.

- VII.4.4. However, absolute protection from public disclosure of the RFP Bidders' data and information filed in response to this RFP cannot be provided and is not intended. By submitting a Proposal in response to this RFP, each RFP Bidder acknowledges and agrees to the limitations of the confidentiality provisions set forth in this section.
- VII.4.5. In addition, the RFP Bidders' data and information filed in response to the RFP will be disclosed if required by any federal, state or local agency (including, without limitation, the Commission) or by a court of competent jurisdiction. PECO or the Independent Evaluator will notify the RFP Bidder in advance of such disclosure and cooperate with such RFP Bidder, to the extent deemed reasonable by PECO, and at the expense of the RFP Bidder, to prevent the disclosure of such materials. In any event, PECO, its employees, and agents including the Independent Evaluator will not be responsible to the RFP Bidders or any other party or liable for any disclosure of such designated materials before, during or subsequent to this RFP.

## **ARTICLE VIII. Reserved Rights**

VIII.1.1. PECO will not be liable to any RFP Bidder or any other party for failure to execute a 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 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.