

**METROPOLITAN EDISON COMPANY, PENNSYLVANIA ELECTRIC COMPANY AND
PENNSYLVANIA POWER COMPANY
SOLAR PHOTOVOLTAIC ALTERNATIVE ENERGY CREDITS
REQUEST FOR PROPOSALS (RFP)
RULES**

January 19, 2021

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Article I. Introduction

I.1. Overview

I.1.1. Metropolitan Edison Company, Pennsylvania Electric Company and Pennsylvania Power Company (“the Companies”) seek to procure a portion of their requirements for Solar Photovoltaic Alternative Energy Credits (“SPAECs”) under the Alternative Energy Portfolio Standards Act, 73 P.S. §§ 1648.1-1648.8 (“AEPS Act”), as may be amended from time to time. The product will consist of a 2-year “strip” supply of SPAECs, with a Target Quantity of 137,000 SPAECs per Reporting Year (June 1 – May 31) as defined under the AEPS Act.

I.1.2. Additional capitalized terms in this document, which are not defined explicitly herein, are defined in the Companies’ Solar Photovoltaic Alternative Energy Credit Purchase and Sale Agreement (“SPAECPSA”). The SPAECPSA is attached hereto as Appendix 1. Key defined terms include the following:

Bid	Binding offer to supply a portion of the Tranche Target at a specified price per SPAEC
Bidder	A prospective Supplier that submits any part of a Proposal for the RFP
Evaluation Team	Representatives of the Independent Evaluator, one or more credit representatives from the Companies, and a legal representative on behalf of the Companies
Independent Evaluator (“IE”)	<i>The Brattle Group</i>
PaPUC	Pennsylvania Public Utility Commission (also “Commission”)
Part 1 Date	Date by which Part 1 Proposals must be submitted
Part 2 Date	Date by which Part 2 Proposals, which include Bids, must be submitted
Pre-Bid Security	Security in the form of cash or a letter of credit required to be posted by Qualified Bidders upon submission of Part 2 proposal

Proposal	A two part process by which Bidders qualify and bid in the RFP
Qualified Bidder	Bidder whose Part 1 Proposal has been accepted by the Independent Evaluator and the Companies
RFP	Request for Proposal process, consisting of a single round of sealed bids
SPAEC Cap	The largest whole number less than or equal to 75% of the Tranche Target (i.e., 205 Tranches)
Target Quantity	The number of SPAECs the Companies are seeking per Reporting Year (137,000 SPAECs)
Tranche	500 SPAECs per Reporting Year under the AEPS Act.
Tranche Target	Number of Tranches needed for Target Quantity (i.e., 274 Tranches)

- I.1.3. The Companies will hold two (2) RFPs to procure the Tranche Target to be supplied over 2 year periods each.
- I.1.4. This RFP was established through a petition of the Companies to the Pennsylvania Public Utility Commission ("PaPUC" or "Commission"). The process consists of a single round of sealed bids, in which prospective suppliers state the prices at which they are willing to supply SPAECs, the number of Tranches that they are willing to supply, and whether their offers are "all-or-nothing," as described below. The evaluation of Bids is on a price-only basis. In the RFP, the winning Bids will be those that minimize the cost of the procurement. The winning Bidders will be paid the prices they Bid for the SPAEC Tranches they win.
- I.1.5. This document, entitled the RFP Process and Rules ("RFP Rules"), describes how the RFP will be conducted. The RFP process will consist of two parts: (1) Part 1 - submission of an initial application in which prospective suppliers are qualified as to general creditworthiness and compliance with RFP requirements (after making specified representations and agreeing to specified conditions); and (2) Part 2 - the submission by

prospective suppliers of Bids to supply a portion of the Tranche Target referenced above at a specified price per SPAEC, accompanied by Pre-Bid Security.

- I.1.6. The following documents are appended to, and shall be considered integral parts of, these RFP Rules:

Appendix 1: Solar Photovoltaic Alternative Energy Credit Purchase and Sale Agreement

Appendix 2: Confidentiality Statement

Appendix 3: Standard Form of Pre-Bid Letter of Credit

Appendix 4: Requirements for Attestation of Chief Financial Officer

Appendix 5: Sample Part 1 Form

Appendix 6: Sample Part 2 Form (including Bid Submittal Sheet)

- I.1.7. A Proposal consists of two parts. The first part of the Proposal ("Part 1 Proposal") is the Bidder's response to the qualification standards that are fully described in Article IV of these RFP Rules. A Bidder that fulfills the qualification standards of the Part 1 Proposal becomes a Qualified Bidder, and therefore may submit the second part of the Proposal ("Part 2 Proposal"). The requirements for the Part 2 Proposal are fully described in Article V of these Rules. The requirements for the Part 2 Proposal include the submission of Bids and the posting of financial guarantees. Bidders use standard forms, the Part 1 Form and the Part 2 Form, to submit their Part 1 and Part 2 Proposals respectively. The Part 1 Form and the Part 2 Form are provided as Appendices 5 and 6 to these RFP Rules, respectively.

- I.1.8. The Companies and the Independent Evaluator may advise the Commission to postpone or modify the schedule of the RFP when market conditions warrant or when extraordinary events arise, such as the advent of war, terrorism, or an act of God. The Companies and the Independent Evaluator may also advise the Commission to modify parameters of the RFP, as further explained in Article VIII.

I.2. Products and Bidding Process

- I.2.1. Qualified Bidders in the RFP can Bid any number of Tranches up to the SPAEC Cap (*i.e.*, the largest whole number less than or equal to 75% of the Tranche Target).
- I.2.2. In the RFP, a Qualified Bidder that presents a Bid will state the price per SPAEC at which it is willing to supply one or more of the Tranches available in the RFP, subject to the SPAEC Cap. Bids are evaluated on a price-only basis.
- I.2.3. Upon receipt of Bids, the Independent Evaluator will rank all Bids from lowest to highest price. The Independent Evaluator will determine a portfolio of winning Bids that minimizes the overall cost of the procurement.
- I.2.4. The winning Bidders are those Bidders whose Bids minimize the overall cost of satisfying the Tranche Target. All winners receive the price they Bid. The prices in the RFP are expressed in dollars per SPAEC, rounded off to the nearest cent.
- I.2.5. A report containing the results of the bidding process will then be submitted to the PaPUC, who will then have three (3) business days to approve the procurement results. If the procurement is approved by the PaPUC, each winning Bidder will then execute the SPAECPSA accompanying this RFP with each of the Companies.
- I.2.6. If the PaPUC rejects the winning Bids in the RFP, or if some Tranches remain unfilled, the Companies will implement a contingency plan for the unfilled Tranche(s). Under the plan, the Companies propose that they will secure any SPAEC compliance requirements for unfilled tranches at market prices until an alternative contingency plan is approved by the PaPUC. The Companies will consult with the Independent Evaluator, Commission staff, and statutory parties to determine the appropriate alternative contingency plan for the remaining requirement.
- I.2.7. A Bidder submitting Bids in an RFP must accept the obligations and associated rights to provide SPAECs as defined in the SPAECPSA.

I.3. Supplier Obligations

- I.3.1. This section contains a general description of each winning Bidder's obligations. This is a summary only and is subject to and qualified in its entirety by the SPAECPSA.
- I.3.2. Each winning Bidder is responsible for providing 500 SPAECs in each Reporting Year (June 1 to May 31) per tranche that it wins. The delivery period begins on June 1, 2021 and lasts for 2 years.
- I.3.3. Each winning bidder will execute a SPAECPSA with each of the Companies and will be instructed by the Companies as to how to divide its corresponding SPAEC obligation between the Companies.
- I.3.4. Suppliers will be expected to deposit their SPAECs quarterly with the Companies throughout the life of their contracts, so that their combined deposits in each Reporting Year equal the number of tranches to which they are obligated, multiplied by 500 SPAECs per tranche.
- I.3.5. The Companies will only accept SPAECs from sources approved by the PaPUC's AEPS Program Administrator and generated through PJM Environmental Information Services Inc.'s ("PJM-EIS") Generation Attributes Tracking System ("GATS") which the PaPUC has designated under the AEPS Act as the "registry" for issuance of SPAECs. It will be incumbent on the winning supplier to open and maintain, at its own expense, a GATS account in order to satisfy the AEPS Act requirements.
- I.3.6. A winning supplier must provide GATS-generated certificates so that the Companies may satisfy AEPS reporting requirements. GATS, which was implemented in September 2005, is a regional environmental information tracking system that assists utilities and load serving entities in complying with renewable standards and provides state agencies with proper reporting and verification. This system creates certificates based on actual generation from renewable resource facilities.

- I.3.7. If a supplier fails to provide sufficient SPAECs to the Companies or any of the SPAECs are unable to be used for compliance with the AEPS Act solar photovoltaic requirements, the supplier will be assessed the penalty for non-compliance under the AEPS Act, or the difference in the price the supplier is paid under the SPAECPSA and the cost of SPAECs that the Companies purchase to make up for the supplier shortfall.

Article II. Information and Schedule

II.1. Information Provided to Potential Bidders

- II.1.1. The Companies and the Independent Evaluator have established a web-based data room (www.firstenergycorp.com/PA2021SPAECRFP) that will be the main source of information for the RFP. Prospective Bidders are invited to use this data room for current data and information about all aspects of the RFP and to access all essential RFP documents.
- II.1.2. The web-based data room will provide the information in the following sections:
- Home: This section provides announcements of interest to prospective Bidders and to other interested parties regarding the RFP.
- Regulatory Information Page: This section provides presentations regarding the RFP prepared by the Companies and the Independent Evaluator, as well as the Orders from the PaPUC.
- Supplier Documents: This section provides RFP documents including the RFP Rules and the SPAECPSA. This section also provides all credit instruments necessary for prospective Bidders and for Suppliers, including the standard form for the Pre-Bid Letter of Credit, the standard form for the Letter of Credit for the term of each SPAECPSA, and the standard Guaranty for the term of each SPAECPSA. Any approved modifications to these documents will also be posted in this section.

Ask a Question: In this section, all stakeholders, including prospective Bidders, will be able to ask questions via a web form. The Independent Evaluator will provide an answer to the question via email to the questioner, and the Independent Evaluator will then provide the question and answer to all stakeholders and prospective Bidders through a posting to the web-based data room so that all have access to the same information. Aspects of the question or answer that might identify the party asking the question will be removed before posting.

FAQs: In this section, the Independent Evaluator posts the questions and answers received.

Register Page: In this section, all stakeholders, including prospective Bidders, will be able to register to receive announcements directly from the Independent Evaluator via email.

Calendar: This section provides prospective Bidders with all crucial dates in the RFP.

II.2. RFP Schedule

The following is a general timetable for the RFP.

Table II-1: Provisional Schedule

Event	Date
The Companies file Default Service Program	December 11, 2017
Commission Order Regarding Default Service Program	August 23, 2018
RFP web-based data room opens	January 19, 2021 or earlier
The Companies issue Final RFP documents	January 19, 2021 or earlier
Bidder Information Sessions	January 28, 2021
Part 1 Date (Bidders submit Part 1 Proposals)	February 9, 2021
Bidders are notified of qualification status for submission of Part 2 Proposals	February 17, 2021
Part 2 Date (Bidders submit Part 2 Proposals including Bid and executed Pre-Bid Letter of Credit)	March 3, 2021
Independent Evaluator (IE) submits report to Commission	March 5, 2021
Commission makes decision on results of RFP	March 10, 2021
Winning Bidders execute the SPAECPSAs	March 15, 2021

Article III. General Requirements for Proposals

- III.1.1. A Proposal is an application to Bid in the RFP. A prospective Supplier that submits any part of a Proposal for the RFP is a Bidder. A Proposal consists of two parts, the Part 1 Proposal and the Part 2 Proposal.
- III.1.2. A Bidder submits a maximum of one (1) Part 1 Proposal. The Bidder must use the Part 1 Form provided as Appendix 5 to these RFP Rules for this purpose. The requirements of the Part 1 Proposal are fully described in Article IV of these RFP Rules.
- III.1.3. A Bidder that fulfills the qualification standards of the Part 1 Proposal may submit a maximum of one (1) Part 2 Proposal. A Bidder must use the Part 2 Form provided as Appendix 6 to these RFP Rules for this purpose. The requirements for the Part 2 Proposal are fully described in Article V of these Rules. The requirements for the Part 2 Proposal include the posting of financial guarantees as well as the Bid.
- III.1.4. Part 1 Proposals must be submitted by noon (12:00 PM)¹ on the Part 1 Date and Part 2 Proposals must be submitted by noon (12:00 PM) on the Part 2 Date.
- III.1.5. Proposals must adhere to the terms and conditions of these RFP Rules and must fulfill all requirements in Article III, Article IV and Article V of these RFP Rules. Proposals that do not adhere to the terms and conditions of these RFP Rules or that do not fulfill all requirements set forth in Article III, Article IV and Article V of these RFP Rules will not be considered.
- III.1.6. It is the intention, but not the obligation, of the Companies to enter into an SPAECPSA with each winning Bidder to supply a portion of the Tranche Target, in accordance with these RFP Rules.
- III.1.7. The Bidder, at its own cost and expense, shall defend the Companies and their subsidiaries, affiliates, successors and assigns, and each and every one of its past, present, or future officers, directors, trustees, employees, shareholders, executors,

¹ Unless noted otherwise, all times refer to Eastern Prevailing Time ("EPT").

administrators, successors and assigns, 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 a Proposal or breach of any covenant by the Bidder set forth herein. The Bidder shall indemnify and hold harmless the Companies, their parent companies, subsidiaries, affiliates, successors and assigns, and each and every one of its past, present, or future officers, directors, trustees, employees, shareholders and agents, as well as the heirs, executors, administrators, successors and assigns against any and all liens, judgments, liabilities, losses, injuries, damages, fees, fines, 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 Bidder as set forth herein.

III.1.8. The submission of a Proposal to the Companies constitutes the Bidder's acknowledgement and acceptance of all the terms and conditions of these RFP Rules, regardless of the outcome of any RFP or the ultimate fate of such Proposal.

III.1.9. An Officer of the Bidder is an individual empowered to undertake contracts and bind the Bidder. The Bidder will be required to provide the name, title, and full contact information (address, phone number, fax number, email address) of the Officer of the Bidder who will be making the representations in the Proposal.

III.1.10. All information provided and certifications made in the Proposal must remain valid and remain in full force for no less than five (5) business days after close of bidding in the RFP. Regardless of the reason, if any information provided changes or any previous certification fails to remain valid, it is the sole responsibility of the Bidder to notify the Independent Evaluator of such change at least three business days before the Part 2 Date. Failing to do so may result in disqualification of the Bidder and the Proposal. The Independent Evaluator reserves the right to vary the assessment of the Proposal based on the revised information provided by the Bidder.

Article IV. Part 1 Proposal Requirements

IV.1. General

- IV.1.1. To participate in the RFP, a party must meet the qualification requirements as detailed in this Article. These qualification requirements include providing contact information, providing financial information for a creditworthiness assessment, as well as making representations to ensure that the Bidder can perform under the terms of the SPAECPSA.
- IV.1.2. The exclusive method for submitting information related to the Part 1 Proposal is to use the Part 1 Form. One (1) original of the Part 1 Form is required, as well as an electronic submission (by email). Except as otherwise explicitly indicated, a Bidder includes in its Part 1 Proposal one (1) copy of the documents required in this Article IV, either in hard copy or electronically on a CD or by email. All materials for the Part 1 Proposal must be received by the Part 1 Date.

IV.2. Creditworthiness Information

- IV.2.1. Per the SPAECPSA, the Bidder must clearly select one of the following three options: (a) seek an unsecured line of credit by relying on its own financial standing for purposes of submitting to the creditworthiness standards of the SPAECPSA; (b) seek an unsecured line of credit by relying on the financial standing of a guarantor (the "Guarantor") for purposes of submitting to the creditworthiness standards of the SPAECPSA; (c) elect not to apply for an unsecured line of credit and instead stand ready to post cash or a letter of credit acceptable to the Companies for the entire amount of the security due under the SPAECPSA.
- IV.2.2. A Bidder that selects option (a) in Paragraph IV.2.1 must submit the following information and documents in its Part 1 Proposal: (i) The Bidder's most recent Securities and Exchange Commission ("SEC") Form 10-K; if unavailable, the most recent audited annual

financial information (including a balance sheet, income statement, and cash flow statement, and any accompanying notes and schedules); (ii) The Bidder's most recent SEC Form 10-Q; if unavailable, the most recent quarterly or monthly financial data accompanied by an attestation by the Bidder's Chief Financial Officer, satisfying the requirements set out in Appendix 4, that the information submitted fairly presents in all material respects the financial condition and results of the operations of the Bidder; (iii) Any SEC Form 8-K filings by the Bidder, as well as any other public financial disclosures made by the Bidder since the release of the Bidder's most recent financial statements for any matters that are material to the Bidder's financial condition; (iv) A statement, as applicable, of rulings, judgments, litigation, contingent liabilities, revocations of authority, investigations or any other matters relating to the financial status of the Bidder that have had a material impact on the entity's financial status since the release of the Bidder's most recent financial data or most recent public financial disclosure; (v) The Bidder's senior unsecured debt rating from at least two of the following rating agencies: Standard & Poor's Rating Services ("S&P"), Moody's Investors Service, Inc. ("Moody's") or Fitch, Inc. ("Fitch") along with documentation for each rating agency showing the name of the rating agency, the type of rating, and the rating of the Bidder; and (vi) The name, title, and full contact information (address, phone number, fax number, email address) of a credit representative from the Bidder who will be able to answer questions on the documentation provided.

- IV.2.3. The RFP Bidder that selects option (b) in Paragraph IV.2.1 must submit the following information and documents in its Part 1 Proposal: (i) The name of the entity serving as RFP Guarantor; (ii) The RFP Guarantor's most recent SEC Form 10-K; if unavailable, the most recent audited annual financial information (including a balance sheet, income statement, and cash flow statement, and any accompanying notes and schedules); (iii) The RFP Guarantor's most recent SEC Form 10-Q; if unavailable, the most recent audited quarterly financial information (including a balance sheet, income statement, and

cash flow statement, and any accompanying notes and schedules); if both the SEC Form 10-Q and audited quarterly financial information are unavailable, the most recent quarterly or monthly financial data accompanied by an attestation by the RFP Guarantor's Chief Financial Officer, in the form of Appendix 4, that the information submitted is true, correct and a fair representation of the RFP Guarantor's financial condition; (iv) Any SEC Form 8-K filings by the RFP Guarantor, as well as any other public financial disclosures made by the RFP Guarantor, since the release of the RFP Guarantor's most recent financial statements for any matters that are material to the entity's financial condition; (v) A statement, as applicable, of rulings, judgments, litigation, contingent liabilities, revocations of authority, investigations or any other matters relating to the financial status of the RFP Guarantor that have had a material impact on its financial status since the release of the entity's most recent financial data or most recent public financial disclosure; (vi) The RFP Guarantor's senior unsecured debt rating from at least two of the following rating agencies: S&P, Moody's, or Fitch along with documentation for each rating agency showing the name of the rating agency, the type of rating, and the rating of the entity; (vii) The name, title, and full contact information (address, phone number, fax number, email address) of a credit representative from the RFP Guarantor who will be able to answer questions on the documentation provided.

IV.2.4. A Bidder that selects option (c) in Paragraph IV.2.1 must submit the following information and documents in its Part 1 Proposal: (i) a statement, as applicable, of rulings, judgments, litigation, contingent liabilities, revocations of authority, investigations or any other matters relating to the financial status of the RFP Bidder that have had or may have a material impact on its financial status and (ii) the name, title, and full contact information (address, phone number, fax number, email address) of a credit representative from the RFP Bidder who will be able to answer questions on the documentation provided.

IV.2.5. For all Bidders, the Part 2 Proposal requires Pre-Bid Security in the form of cash or an executed Pre-Bid Letter of Credit established for the account of the Bidder and acceptable

to the Companies. The required amount for the Pre-Bid Security is specified in Article V. The standard form for the Pre-Bid Letter of Credit, provided as Appendix 3, is acceptable to the Companies. A Bidder that will not use exactly the standard form for the Pre-Bid Letter of Credit with its Part 2 Proposal (or a form with only those modifications accepted by the Companies and posted in the data room prior to the Part 1 Date) must submit with its Part 1 Proposal any and all proposed modifications to the standard Pre-Bid Letter of Credit for evaluation. The Bidder must submit a Draft Pre-Bid Letter of Credit electronically in MS-Word format, either saved to a CD or sent via email to the Independent Evaluator. The Draft Pre-Bid Letter of Credit must indicate clearly each and every modification from the standard form requested by the Bidder or its financial institution. The Independent Evaluator and the Companies will assess, in their sole and exclusive discretion, whether such modifications are acceptable. All modifications proposed by a Bidder and found to be acceptable will be posted to the web-based data room for the benefit of all Bidders. A Bidder, in its Part 2 Proposal, must provide cash or an executed Pre-Bid Letter of Credit that either uses the standard form or that incorporates only those modifications to the standard form accepted by the Companies.

- IV.2.6. A Bidder that is not incorporated or otherwise formed under the laws of the United States must provide the following additional information: (i) A legal opinion of counsel qualified to practice in the foreign jurisdiction in which the Bidder is incorporated or otherwise formed that the SPAECPSA will become, upon the completion of execution formalities, the binding obligation of the 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 the Bidder that the person who will be executing the SPAECPSA on behalf of the Bidder has the authority to execute the SPAECPSA and that the governing board of the Bidder has approved the execution of the SPAECPSA; (iii) The sworn certificate of the corporate secretary (or similar officer) of the Bidder that the Bidder has been authorized by its governing board to enter into agreements of the same type as the SPAECPSA.

IV.2.7. The Bidder whose Guarantor is not incorporated or otherwise formed under the laws of the United States must provide the following additional information: (i) A legal opinion of counsel qualified to practice in the foreign jurisdiction in which the Guarantor is incorporated or otherwise formed that the standard Guaranty of the SPAECPSA will become, upon the completion of execution formalities, the binding obligation of the Guarantor in the jurisdiction in which it has been incorporated or otherwise formed; (ii) The sworn certificate of the corporate secretary (or similar officer) of the Guarantor that the person executing the Guaranty on behalf of the Guarantor has the authority to execute the Guaranty and that the governing board of the Guarantor has approved the execution of the Guaranty; (iii) The sworn certificate of the corporate secretary (or similar officer) of the Guarantor that the Guarantor has been authorized by its governing board to enter into agreements of the same type as the standard Guaranty of the SPAECPSA.

IV.3. Additional Requirements

- IV.3.1. An Officer of the Bidder is an individual empowered to undertake contracts and bind the Bidder. The Bidder must provide the name, title, and full contact information (address, phone number, fax number, email address) of an Officer of the Bidder who will be making the representations in the Part 1 Proposal and in the Part 2 Proposal.
- IV.3.2. The Officer of the Bidder must, in the Part 1 Proposal, certify that the Bidder is a corporation, partnership, limited liability company or other legal entity, duly organized, validly existing and in good standing under the laws of the Commonwealth of Pennsylvania or, if another jurisdiction, that the Bidder is duly registered and authorized to do business and is in good standing in such other jurisdiction.
- IV.3.3. The Officer of the Bidder must, in the Part 1 Proposal, certify that all information provided in the Part 1 Proposal is true and accurate to the best of the Officer's knowledge and belief.

- IV.3.4. The Officer of the Bidder must, in the Part 1 Proposal, certify that the Officer is authorized to submit the Part 1 Proposal on behalf of the Bidder and is authorized to bind the Bidder.
- IV.3.5. The Officer of the Bidder must, in its Part 1 Proposal, certify that the Officer has read the SPAECPSA and that the Bidder accepts all of the terms of the SPAECPSA without modifications.
- IV.3.6. The Officer of the Bidder must, in its Part 1 Proposal, certify that the Officer has read these RFP Rules and that the Bidder accepts all terms of the RFP Rules and agrees to comply with the RFP Rules, including: (i) agreement that if the Bidder becomes a winner, it will execute the SPAECPSA within three (3) business days of approval of the procurement results by the PaPUC and (ii) agreement that if the Bidder becomes a winner, it will comply with the financial security requirements set forth in the SPAECPSA.
- IV.3.7. The Officer of the Bidder must, in its Part 1 Proposal, certify that its Part 1 Proposal will remain in full force until: (i) the PaPUC has accepted the results of the RFP and the Bidder did not win any Tranches; or (ii) the PaPUC has accepted the results of the RFP, the Bidder won Tranches, the Bidder has executed the SPAECPSA, and the Bidder has satisfied the creditworthiness standards of the SPAECPSA; or (iii) the PaPUC has rejected the results of the RFP; but (iv) in no event less than five (5) business days after the close of bidding for the RFP.
- IV.3.8. The Officer of the Bidder must certify in the Part 1 Proposal that if for any reason or due to any circumstance, any information provided in the Part 1 Proposal changes or any certification fails to remain valid, the Bidder will notify the Independent Evaluator of such changes at least three (3) business days before the Part 2 Date and will provide the updated information at least one (1) business day before the Part 2 Date.
- IV.3.9. An Officer of the Bidder must, in its Part 1 Proposal, certify that the Bidder is not acting and will not act through a partnership, joint venture, limited liability partnership, or other association, organization, or any other arrangement with respect to its Proposal. If unable to make such a certification, the Officer of the Bidder must disclose the members

of the partnership, joint venture, or other joint action with respect to its Proposal, as well as the nature of the association, agreement or joint action. A Bidder acting in concert with another Bidder may be disqualified by the Independent Evaluator on behalf of the Companies in their sole and exclusive discretion.

IV.3.10. An Officer of the Bidder must, in its Part 1 Proposal, certify (i) that there are no actions at law, suits in equity, proceedings or claims pending or, to such Bidder's knowledge, threatened against the Bidder before any federal, state, foreign or local court, tribunal or government agency or authority that might materially delay, prevent or hinder the Bidder's performance of its obligations under the terms of any SPAECPSA; (ii) the Bidder has not had any permit or authority to do business in any jurisdiction revoked or suspended; and (iii) the Bidder and its corporate officers have never been barred from public bidding or sanctioned for unauthorized disclosure of confidential information.

IV.3.11. An Officer of the Bidder must, in the Part 1 Proposal, certify that if the Bidder qualifies to participate in the RFP, the Bidder will not substitute another entity in its place, transfer its rights to another entity, or otherwise assign its status as Qualified Bidder to another entity.

IV.3.12. All information provided and certifications made in the Part 1 Proposal must remain valid and remain in full force no less than five (5) business days after the close of bidding for the RFP. 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 Bidder to notify the Independent Evaluator of such change at least at least three (3) business days before the Part 2 Date and to provide the updated information at least one (1) business day before the Part 2 Date. The Independent Evaluator reserves the right to vary the assessment of the Part 1 Proposal based on the revised information provided by the Bidder.

Article V. Part 2 Proposal Requirements

V.1. General

- V.1.1. Only a Bidder that has satisfied the qualification requirements of the Part 1 Proposal may submit a Part 2 Proposal. To participate in the RFP, a Bidder must meet all requirements detailed in this Article for the Part 2 Proposal. These requirements include providing a Bid, providing financial guarantees to support that Bid, and making a number of certifications to ensure that the Bidder is bidding independently and is maintaining the confidentiality of information.
- V.1.2. The Part 2 Form is the exclusive method for submitting information required by the Part 2 Proposal. Three (3) originals of the Part 2 form are required. All materials for the Part 2 Proposal, including Pre-Bid Security, must be received by noon (12:00 PM) on the Part 2 Date.
- V.1.3. A Bidder that is associated with another Bidder, as further detailed in Appendix 6, may be subject to additional requirements in its Part 2 Proposal. A qualified Bidder is “associated with” another Bidder if the two Bidders have ties that could allow them to act in concert or that could prevent them from competing actively against each other.

V.2. Bids

- V.2.1. A Bidder submits a Bid with its Part 2 Proposal.
- V.2.2. Bids in the RFP are submitted in both hard copy and electronic copy (via email).
- V.2.3. Bids must be submitted by noon (12:00 PM) on the Part 2 Date exclusively using the Bid Submittal Sheet for the RFP.
- V.2.4. A Bid consists of three elements: (i) a price in dollars per SPAEC in the format \$x.xx, \$xx.xx or \$xxx.xx (rounded to the nearest cent); (ii) a specification of the maximum number of Tranches offered; and, (iii) an indication of whether the bid is “all or nothing.” The price per SPAEC applies to all Tranches for which the Bidder is making an offer.

- V.2.5. A Bidder may not Bid on less than a full Tranche. The Bidder may not Bid on fractions, portions or parts of Tranches.
- V.2.6. Every Bid is a binding obligation to provide the supply for SPAECs at the price at which the Bid was made. By placing its Bid, the Bidder is declaring that it stands ready, willing and able to supply the SPAECs represented by the Tranches that it Bid, at the prices indicated.
- V.2.7. The number of Tranches for which a Bidder submits a Bid cannot exceed the SPAEC Cap. The SPAEC Cap is intended to promote supplier diversity, consistent with PaPUC policy.
- V.2.8. Unless indicated as an “all-or-nothing” Bid, Bids will be considered an offer to supply any quantity up to and including the number of Tranches specified in the Bid (an “up-to” Bid). Recognizing that the magnitude of SPAEC sales to the Companies may affect financing or other commercial considerations for Qualified Bidders, “all-or-nothing” Bids will be allowed, such that Qualified Bidders will not be bound to supply SPAECs in quantities other than those Bid. However, the designation of a Bid as “all-or-nothing” will apply to no more than 4 Tranches. For any Bids that exceed 4 Tranches and are designated as “all or nothing,” the “all or nothing” portion of the Bid will apply to the first 4 Tranches only (i.e., the Bid may be accepted for the supply of 4 or more Tranches “up to” the number of Tranches bid).

Illustrative outcomes of allowing all-or-nothing bidding are shown below. In each scenario, five Bidders are assumed to Bid quantities that aggregate to an amount exceeding a hypothetical Tranche Target of 15 Tranches. Therefore, to result in the lowest-cost combination of Bids that meets the Tranche Target, one or more Bids must be excluded. All Bids are on an “up-to” basis with the exception of Bid #4, which is all-or-nothing.

Illustrative “All-Or-Nothing” Bid Scenarios

		Scenario A: All-or-nothing included in low-cost combination		Scenario B: All-or-nothing excluded from low-cost combination	
Bidder	Bid Type	Quantity	Price	Quantity	Price
#1	“Up to”	6	\$50	6	\$50
#2	“Up to”	5	\$60	5	\$60
#3	“Up to”	2	\$90	2	\$75
#4	“All-or-nothing”	4	\$100	4	\$100
#5	“Up to”	2	\$150	2	\$105
Low Cost Combination		15	\$66.67	15	\$64.00

Excluded bids in each scenario are shaded in gray.

In scenario A, the combination of bids that minimizes the cost of the procurement includes the all-or-nothing Bid, but excludes Bid #3 and Bid #5 (where excluded Bids are shaded in gray). Conversely, in scenario B, the combination of bids that minimizes the cost of the procurement excludes the all-or-nothing Bid.

- V.2.9. In the event of “tied” up-to bids (i.e., bids with the same offer price) that cannot be accepted up to their maximum tranche offers, the available tranches will be divided on a pro-rata basis based on each Bidder’s maximum tranche offer, after first subtracting out the tranches requested in any all-or-nothing bids that are part of the tied bids. For example, consider a situation where 6 tranches are to be allocated to two tied bidders, where one bid is “up to” 4 tranches and the other bid is “up to” 8 tranches. In this case, 2 tranches will be assigned to the “up-to-4-tranche” bidder, and 4 tranches will be assigned to the “up-to-8-tranche” bidder.
- V.2.10. All Bidders that win Tranches and are authorized as suppliers receive the price they Bid.
- V.2.11. A Bid that is not expressed in dollars per SPAEC will automatically be rejected.
- V.2.12. The number of Tranches stated by the Bidder in its Bid for the RFP determines the amount of Pre-Bid Security that a Bidder must provide with its Part 2 Proposal, as detailed in the next Section.

V.3. Pre-Bid Security

- V.3.1. The Bidder, in its Part 2 Proposal, must provide Pre-Bid Security in the form of cash or an executed Pre-Bid Letter of Credit that either uses the standard form as provided in Appendix 3, or that incorporates only those modifications to the standard form accepted by the Companies. All modifications to the standard form of the Pre-Bid Letter of Credit accepted for the benefit of a single Bidder will be posted to the web-based data room and made available to all Bidders on an optional basis.
- V.3.2. The amount of the Pre-Bid Security must be equal to 10% of the security required under the SPAECPSA relevant to the maximum number of Tranches that Bidders are proposing to supply in the Bids. According to the terms of the SPAECPSA, security requirements per Tranche equal 500 SPAECs (representing the annual SPAEC obligation per Tranche) multiplied by twice the price offer made by the Bidder.

Example: Deposit required upon submission of Bid

A Qualified Bidder submits a Bid of up to 5 Tranches at \$100 per SPAEC. The Bid must be accompanied by a deposit equal to 10% of the associated security requirements under the SPAECPSA at the maximum Tranche offer. The security requirements equal the annual SPAEC supply obligation (i.e., the number of Tranches x 500 SPAECs per Tranche), multiplied by twice the bid price. Therefore, in this case, the required bid deposit is:

$$10\% \times (5 \times 500) \times (2 \times 100) = \$50,000.$$

- V.3.3. The Pre-Bid Security for the RFP must be provided no later than the Part 2 Date. The Independent Evaluator holds Pre-Bid Letters of Credit on behalf of the Companies. If a Bidder wishes to post Pre-Bid Security in the form of cash, then it must electronically transfer the cash to the Companies based on instructions emailed to Qualified Bidders.
- V.3.4. If the Bidder submits a Pre-Bid Letter of Credit that does not conform to the standard form provided in Appendix 3 or incorporates modifications to the standard form other than those accepted by the Companies, that Bidder's Part 2 Proposal is considered deficient. The Bidder may not be permitted to submit Bids in the RFP.
- V.3.5. A Bidder will forfeit its Pre-Bid Security if: (i) the Bidder has made a material omission or misrepresentation in its Part 1 Proposal or in its Part 2 Proposal; (ii) the Bidder discloses information relating to its Proposal or its Bids publicly or to any other party before the PaPUC, the Companies, or the Independent Evaluator has disclosed the names of the winning suppliers and the winning Bid prices of the RFP; (iii) the Bidder wins one or more Tranches and fails to execute the SPAECPSA within three (3) business days of the PaPUC's approval of the results of the RFP; or (iv) the Bidder wins one or more Tranches and fails to meet the creditworthiness requirements of the SPAECPSA at the time of its execution.

- V.3.6. The Independent Evaluator will release the Pre-Bid Letters of Credit and the Companies will return pre-bid cash security as soon as practicable if the PaPUC rejects the results of the RFP. If the PaPUC accepts the results of the RFP, the Pre-Bid Letter of Credit of a Bidder will be released: (i) the business day after the PaPUC decision if the Bidder does not win any Tranches; or (ii) the business day after the Bidder executes the SPAECPSA and meets the creditworthiness requirements under the SPAECPSA if the Bidder wins Tranches in the RFP.

V.4. Additional Requirements

- V.4.1. An Officer of the Bidder is an individual empowered to undertake contracts and bind the Bidder.
- V.4.2. The Officer of the Bidder must, in the Part 2 Proposal, certify that all information provided in the Part 2 Proposal is true and accurate to the best of the Officer's knowledge and belief.
- V.4.3. The Officer of the Bidder must, in the Part 2 Proposal, certify that the Officer is authorized to submit the Part 2 Proposal on behalf of the Bidder and is authorized to bind the Bidder.
- V.4.4. An Officer of the Bidder must, in the Part 2 Proposal, certify that any Bid submitted for in the RFP creates a binding and irrevocable offer to provide service under the terms set forth in the SPAECPSA. An Officer of the Bidder must further certify that if the PaPUC approves the results of the RFP, a binding and enforceable contract to provide service with respect to the number of Tranches for which the Bidder is a winner will arise under the SPAECPSA at the final RFP prices.
- V.4.5. The Officer of the Bidder must, in the Part 2 Proposal, certify that its Part 2 Proposal will remain in full force and effect until the earliest to occur of: (i) the PaPUC has accepted the results of the RFP and the Bidder did not win any Tranches; or (ii) the PaPUC has accepted the results of the RFP, the Bidder won Tranches, the Bidder has executed the SPAECPSA, and the Bidder has satisfied the creditworthiness standards of the SPAECPSA;

or (iii) the PaPUC has rejected the results of the RFP; but (iv) in no event less than five (5) business days after the close of bidding for the RFP.

V.4.6. The Officer of the Bidder must, in the Part 2 Proposal, certify that it is bidding independently and that it does not have information concerning a Proposal or Bids being submitted by another Bidder in the RFP. Such information includes, but is not limited to: another Bidder's Bids in the RFP; the quantities that another Bidder wishes to serve; another Bidder's estimation of the value of a Tranche; another Bidder's estimation of the risks associated with serving Tranches under the SPAECPSA; and another Bidder's contractual arrangements with a party to serve Tranches were the Bidder to be a winner of the RFP. This certification must be binding and in effect until the Commission has rendered a decision on the RFP results.

V.4.7. An Officer of the Bidder must, in the Part 2 Proposal, certify that, except for any communication with its financial institution for the purpose of preparing the Pre-Bid Letter of Credit, the Bidder has not disclosed and will not disclose publicly or to any other party any information relating to its Proposal or its Bids, which could have an effect on whether another party submits a Proposal to participate in the RFP, on whether another party submits Bids in the RFP, or on the contents of the Proposal that another Bidder would be willing to submit to participate in the RFP. Such information includes, but is not limited to: the fact that the Bidder is submitting a Proposal to participate in the RFP; the Bidder's Bids in the RFP; the number of tranches that a Bidder wishes to supply; the Bidder's estimation of the value of a Tranche; the Bidder's contractual arrangements for SPAECs with a party to serve Tranches; and, the Bidder's estimation of the risks associated with serving Tranches under the SPAECPSA. Such certification must hold until the PaPUC has disclosed the names of the winning suppliers and the winning Bid prices of that particular RFP.

V.4.8. An Officer of the Bidder must, in its Part 2 Proposal, certify that it will hold confidential any results or data from the RFP, until such time that the results or data are released by

the PaPUC, the Companies, or the Independent Evaluator and are no longer confidential. Such information includes any information that a Bidder acquires as a result of participating in the RFP process, whether in writing or verbally, and that has not been made public by the PaPUC, the Companies, or the Independent Evaluator. Such information also includes, but is not limited to the status of the Bidder's participation in the RFP, all reports of results and announcements made by the Independent Evaluator to all or any one Bidder during the RFP.

- V.4.9. An Officer of the Bidder must, in the Part 2 Proposal, certify that if the Bidder wins Tranches in the RFP, the Bidder will demonstrate compliance with the creditworthiness requirements set forth in the SPAECPSA within three (3) business days of the PaPUC approval of the results for the RFP.
- V.4.10. An Officer of the Bidder must, in the Part 2 Proposal, certify that the Bidder will not substitute another entity in its place, transfer its rights to another entity, or otherwise assign its status as a Bidder to another entity.
- V.4.11. The Officer of the Bidder must agree that the submission of a Part 1 Proposal or a Part 2 Proposal to the Companies constitutes the Bidder's acknowledgement and acceptance of all the terms and conditions of these RFP Rules, regardless of the outcome of the RFP or the ultimate fate of such Proposal.
- V.4.12. All information provided and certifications made in the Part 2 Proposal must remain valid and remain in full force until: (i) the PaPUC has accepted the results of the RFP and the Bidder did not win any Tranches; or (ii) the PaPUC has accepted the results of the RFP, the Bidder won Tranches, the Bidder has executed the SPAECPSA, and the Bidder has satisfied the creditworthiness standards of the SPAECPSA; or (iii) the PaPUC has rejected the results of the RFP; but (iv) in no event less than five (5) business days after the close of bidding for the RFP.

Article VI. Instructions for Preparation of Proposals

VI.1.1. A Bidder must submit its Proposal in various parts, using the Part 1 and Part 2 Forms attached as Appendices 5 and 6 hereto, including the Bid Submittal Sheet provided for the RFP.

VI.1.2. A Bidder must deliver its Part 1 Proposal by 12 PM (noon) on the Part 1 Date. A Bidder that is qualified pursuant to a successful Part 1 Proposal and that submits a Part 2 Proposal must deliver its Part 2 Proposal by 12 PM (noon) on the Part 2 Date.

VI.1.3. The Part 1 Proposal consists of one (1) original (hard copy) and one (1) electronic copy of the Part 1 Form, as well as one (1) copy of all documents required by Article IV. A Bidder must deliver any hard copy information or document related to its Part 1 Proposal (see Paragraph IV.1.2) by certified mail, registered mail, hand delivery, or overnight delivery service to the Companies at the following address:

The Brattle Group
SPAEC RFP Independent Evaluator
1800 M Street, NW
Suite 700 North
Washington, DC 20036

VI.1.4. Oral, telephonic, or faxed Part 1 Proposals will not receive consideration.

VI.1.5. The Part 2 Proposal consists of one (1) original (hard copy) and one electronic copy of the Part 2 Form as well as Pre-Bid Security as described in Article V. A Bidder must deliver the hard copy portion of its Part 2 Proposal by certified mail, registered mail, hand delivery or overnight delivery service to the Companies at the following address:

The Brattle Group
SPAEC RFP Independent Evaluator
1800 M Street, NW
Suite 700 North
Washington, DC 20036

VI.1.6. A Bidder must assume full responsibility for timely delivery in the manner and to the location specified in these RFP Rules.

- VI.1.7. Proposals must be submitted in the complete legal name of the party that will execute the SPAECPSA should the party be a winning Bidder and should the PaPUC approve the RFP results.

Article VII. Evaluation of Proposals

VII.1. Part 1 Proposal Processing and Evaluation

- VII.1.1. The Evaluation Team will consist of representatives of the Independent Evaluator, one or more credit representatives from the Companies, and a legal representative on behalf of the Companies. Not all representatives of the Evaluation Team need participate in the review of a specific aspect of the Part 1 Proposal. A representative from the PaPUC may be present when Part 1 Proposals are processed. Information regarding the content or status of any Part 1 Proposal will not be released publicly or to any individual Bidder during the evaluation process.
- VII.1.2. The Evaluation Team will review Part 1 Proposals upon receipt through noon on the Part 1 Date. The Evaluation Team will assess the Part 1 Proposals for completeness and compliance with the terms and conditions of Article IV of these RFP Rules.
- VII.1.3. A Part 1 Proposal is complete and compliant with the terms and conditions of Article IV if: (i) all financial information specified in Section IV.1 has been provided; (ii) all certifications and other requirements have been provided and are signed by an Officer of the Bidder. Further, unless the Bidder is posting cash for its Pre-Bid Security or is using the standard form for the Pre-Bid Letter of Credit (or a form with modifications accepted by the Companies and posted in the data room prior to the Part 1 Date), the Bidder will submit a draft Pre-Bid Letter of Credit. The Bidder includes, in its Part 1 Proposal, a certification that the Bidder is bidding independently and is not acting in concert with another Bidder. The Independent Evaluator may request additional information to

ascertain that the Bidder is bidding independently of other Bidders. A Bidder that is not bidding independently of another Bidder may fail to qualify.

- VII.1.4. If the Independent Evaluator determines that any aspect of the Bidder's Part 1 Proposal is deficient because the Bidder's submission is incomplete or is not compliant with the terms of these RFP Rules, the Independent Evaluator will issue a deficiency notice requesting that the Bidder complete or provide additional information with respect to that particular aspect of its Part 1 Proposal. A Bidder will have 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 was issued to the Bidder, whichever is later, to respond to the deficiency notice. The Evaluation Team will evaluate any response to a deficiency notice on the day it is received. If the response is not sufficient to cure the deficiency, the Independent Evaluator may request additional information and provide another opportunity for the Bidder to provide the required clarification or additional information to cure the deficiency.
- VII.1.5. The Evaluation Team reviews draft Pre-Bid Letters of Credit on the business day of receipt. The Independent Evaluator notifies the Bidder within two (2) business days whether modifications incorporated in the draft Pre-Bid Letter of Credit are acceptable.
- VII.1.6. When the evaluation of the Part 1 Proposals is complete, Bidders will be either qualified or disqualified. A Bidder is qualified if the Bidder submitted a Part 1 Proposal, as supplemented or amended in response to deficiency notices issued by the Independent Evaluator, that is complete and compliant with the requirements of these RFP Rules. In all other circumstances, the Bidder will be disqualified. Only Qualified Bidders will be invited to submit Part 2 Proposals.
- VII.1.7. The Independent Evaluator notifies a Bidder whether it has qualified no later than the fifth business day after the Part 1 Date.

VII.2. Part 2 Proposal Processing and Evaluation

- VII.2.1. The Evaluation Team will consist of representatives of the Independent Evaluator, one or more credit representatives from the Companies, and a legal representative on behalf of the Companies. A representative from the PaPUC may be present when Part 2 Proposals are processed or when Bids are evaluated. Information regarding the content or status of any Part 2 Proposal will not be released to any Bidder during the evaluation process.
- VII.2.2. Part 2 Proposals will only be considered for those Bidders that have met the qualification requirements of Article IV.
- VII.2.3. The RFP format considers Bids from Bidders that have met all qualification requirements on a price-determinative basis.
- VII.2.4. The PaPUC Staff will have access to all Bids and will be provided with a report from the Independent Evaluator. The Companies will not, at any time during the RFP, have access to any Bidder's individual Bid.
- VII.2.5. Part 2 Proposals must be received by the Independent Evaluator no later than noon on the Part 2 Date. The Independent Evaluator will assess the Part 2 Proposal for completeness and compliance with the terms and conditions of Article V of these RFP Rules.
- VII.2.6. The Independent Evaluator will assess whether all certifications required in the Part 2 Proposal, as specified in Article V.4, have been submitted. If they have not, the Part 2 Proposal will be rejected.
- VII.2.7. The Independent Evaluator will assess whether the Bidder has provided Pre-Bid Security in the form of cash or an executed Pre-Bid Letter of Credit for the account of the Bidder that either uses the standard form or that incorporates only those modifications to the standard form accepted by the Companies. If the Bidder has submitted a Pre-Bid Letter of Credit that is not acceptable to the Companies, or if it is not for the account of the Bidder, the Part 2 Proposal may be rejected.

VII.2.8. Proposals received from a Bidder may be eliminated from further consideration at any point, in the Independent Evaluator's and the Companies' sole and exclusive discretion, for any of the following reasons including (but not limited to): (i) Failure to provide clarification of, or additional information relating to, any aspect of the Proposal as requested by the Independent Evaluator; (ii) Attempts or the appearance of attempts to improperly influence the consideration of the Proposals; (iii) Failure to honor representations made in a Part 1 Proposal or a Part 2 Proposal; and (iv) Illegal conduct, including a Bidder acting in concert with another Bidder.

VII.3. Commission Approval and Review

VII.3.1. The Independent Evaluator will prepare a report two (2) business days after the Part 2 Date. This report will present the results of the RFP. The Independent Evaluator's report will also summarize the most recent processing and evaluation of Proposals. The PaPUC will have three (3) business days after report submission to decide whether to approve the results. If the PaPUC does not issue a decision in three (3) business days, the results are deemed approved. If the results are approved by the PaPUC, the Independent Evaluator will notify all Bidders of the PaPUC's decision. There is no minimum number of bids that must be received in order for the PaPUC to approve the bid results.

VII.3.2. The report of the Independent Evaluator submitted to the Commission will include a state of the market (i.e., "benchmarking") report on the SPAEC market. As part of its content, the benchmarking report will note the number of potential bidders. At least five (5) business days prior to the date bids close (i.e., the Part 2 Date), the benchmarking report will be provided to the Office of Consumer Advocate ("OCA") and Office of Small Business Advocate ("OSBA") on a confidential basis. The OCA and OSBA will have three (3) business days to review the report and provide comments to the Independent Evaluator on a confidential basis. The Independent Evaluator will append any comments provided

by the OCA and OSBA to the report that the Independent Evaluator provides to the PaPUC.

VII.3.3. The Bidders that have approved Bids will have three (3) business days from the date of the PaPUC's approval to execute the SPAECPSA without modifications with each of the Companies. If a winning Bidder fails to execute the SPAECPSA within three (3) business days from the PaPUC's approval, the winning Bidder may forfeit its Pre-Bid Letter of Credit.

Article VIII. Reserved Rights

VIII.1. Non-Binding RFP

VIII.1.1. At any time prior to the execution of the SPAECPSA, the PaPUC has the exclusive right to withdraw and terminate the RFP without any liability or responsibility to any Bidder or any other party, for reasonable cause including, but not limited to, adverse statutory changes or interpretations, issuance of new PaPUC orders and/or regulations, market conditions, or any other extraordinary circumstances that preclude these RFP Rules from being implemented in substantially the manner described herein.

VIII.1.2. Subject to PaPUC approval, the Companies reserve the right to withdraw or terminate the RFP at least two (2) days before the submission of any Bids are due and with notice to Qualified Bidders, without any liability or responsibility to any Bidder or any other party, for reasonable cause including, but not limited to, adverse statutory changes or interpretations, issuance of new PaPUC orders and/or regulations, market conditions, hurricanes, or any other extraordinary circumstances that preclude these RFP Rules from being implemented in substantially the manner described herein.

VIII.1.3. The Companies will not be liable to any Bidder or any other party for failure to execute an SPAECPSA. Nothing herein may be construed to bind the Companies unless and until the PaPUC has approved winning Bid(s), and each SPAECPSA with a Bidder has been

executed and is effective. Once effective, the SPAECPSA will govern the relationship between and the responsibilities of the parties to that agreement and not the RFP Rules or any documents relating thereto.

VIII.1.4. The Companies and the Independent Evaluator reserve the right to reject Proposals submitted in response to the RFP that are incomplete, or do not conform to the requirements of the these RFP Rules, or are submitted beyond the deadline for submission.

VIII.2. Proposals Become the Companies' Property

VIII.2.1. All Proposals submitted by Bidders in response to the RFP will become the exclusive property of the Companies upon the receipt of such document(s).

VIII.3. Confidentiality

VIII.3.1. The Companies and the Independent Evaluator will consider all data and information provided by Bidders in response to the RFP to be confidential and will attempt to limit their disclosure to the public in accordance with the provisions of this Article (the "Confidentiality Provisions"). The Companies will also take reasonable action to ensure that their employees, representatives and agents authorized to consider and evaluate all Proposals protect the confidentiality of such data and information. The Evaluation Team will be provided access to the Bidder's Proposals on a need-to-know basis. Each member of the Evaluation team will be required to sign a Confidentiality Statement, in the form attached hereto as Appendix 2, prior to opening any Proposals and commencing the evaluation thereof.

VIII.3.2. However, absolute protection from public disclosure of the Bidders' data and information filed in response to the RFP cannot be provided and is not intended. For example, the Companies will provide access to the Bidders' data and information to selected personnel/staff from the PaPUC in order to allow the PaPUC to accept or reject the RFP

results. Moreover, the Companies expect to request that the PaPUC permit the public release of information relating to the total number of Proposals received in response to the RFP, the names of the winning Bidders, and the average price per SPAEC for results accepted by the PaPUC. By submitting a Proposal in response to the RFP, a Bidder acknowledges and agrees to the confidentiality provisions set forth herein, as well as any limitations thereto.

VIII.3.3. In addition, the 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 PaPUC) or by a court of competent jurisdiction. However, the Companies will notify the Bidder in advance of such disclosure and cooperate with such Bidder, to the extent deemed reasonable by the Companies, and at the expense of the Bidder, to prevent the disclosure of such materials. In any event, the Companies, their employees, and agents will not be responsible to the Bidders or any other party or liable for any disclosure of such designated materials before, during or subsequent to the RFP. Notwithstanding the above, the Companies reserve the right to use and communicate publicly and/or to third parties any and all information/data submitted in any Proposal in all proceedings before the PaPUC and the courts, if necessary, without the prior consent/approval of, or notice to, any such Bidder.