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STATE OF MARYLAND



PUBLIC SERVICE COMMISSION

December 27, 2011

To Whom It may Concern:

Re: Case No. 9214 Request for Proposals – Evaluation of a Request for Proposal for
Generating Capacity Resources Under Long-Term Contract
ADDITIONAL QUESTIONS AND ANSWERS

Q1. There is a definition for “Market Change” in the attachment but no reference to it in the rest of the Agreement. What happens if the PJM Market is radically modified (ex. market is superseded or disintegrates)?

A. Supplier is responsible for participating in PJM markets. Should a modification of the PJM market beyond the suppliers control make it impossible for the supplier to participate in the market the Supplier will no longer receive payments under this agreement. Such action may qualify as a Force Majeure event.

Q2. “Additionally, testing will be performed to ensure that equipment is functioning property during normal, abnormal and emergency conditions.” What type of “abnormal and emergency” conditions is the MDPSC referring to?

A. The MDPSC is referring to ensuring that equipment is functioning properly under all circumstances.

Q3. Section 2.1.b. “The Supplier shall not, after the Execution Date of this Agreement, modify the economic balance of this Agreement, as defined by the anticipated payments relative to anticipated benefits under this Agreement.” What is meant by the term “economic balance?”

A. Economic balance refers to the anticipated levels of payments and benefits under this Agreement.

Q4. Section 2.5.c. This article references 8.1(d), but it appears as though the drafters really meant to reference 8.1(e) because this article discusses Milestone Events and cross-references Article 2. Which article was meant to be cross-referenced and how long does a Supplier have to cure after it fails to achieve Commercial Operation (90 calendar days or 180 calendar days)?

A. This article was meant to cross-reference Section 8.1.e. Per Section 8.1(e) an event of default may occur if the supplier has not achieved commercial operation within 180 days.

Q5. "Capacity that has neither cleared nor been designated for "make whole" payments will not be deemed to have cleared the Auction when payment calculations are made under this section. The Supplier will be responsible for seeking any "make whole" payments from PJM." What is meant by the term "make whole?"

A. Please refer to PJM Market rules and regulations for details on "make whole" payments.

Q6. "The amount of the Completion and Performance Security applicable to the Facility's Commercial Operation Date shall be set at U.S. Dollar 100 per kW of the Facility's UCAP." This level of performance security is somewhat unprecedented. 1) Is this the correct amount for Completion and Performance Security? 2) Why is this amount so significant?

A. Yes, this is the correct amount for Completion and Performance Security.

Q7. "Notwithstanding anything in this Section 12.12 to the contrary, the Buyer shall have the right to terminate this Agreement if any adjustment in the anticipated payments related to a Change-in-Law affecting Applicable Air Permits and Laws would cause the Buyer's. anticipated payments to Supplier under this Agreement to be increased by more than ten percent (10%) of Buyer's then-current payment amount or should the total accumulation of all such adjustments cause Buyer's payments to Supplier under this Agreement to be increased in total by more than an amount equal to 20% of Buyer's then-current payment amount." Sec. 12.12(b) references "Change-in-Law" but the term does not appear anywhere else. Was this term or its corresponding provision omitted from the Agreement, and if not, does it imply a cross pass-through?

A. This term is not formally defined in the Agreement nor is it meant to imply a cross pass-through.

Q8. Section 13 Exhibits. "The MDPSC reserves the right to add additional information to the Exhibits from the Supplier's proposal at the time of selection of winning projects." What type of additional information can the MDPSC add at the time it selects a winning bid?

A. The MDPSC reserves the right to add to the Exhibits any information provided by the Respondent in their proposal.

Q9. Section 13.3 Exhibit 3. *Cold start applies after ___ hours from shutdown. Why is there an asterisk here?

A. To show that it is linked to the Start Up Time under Cold Conditions. Please see two lines above in Exhibit C.

Q10. The executed Agreement will be contingent upon the EDC's receipt of Commission approval. Is it possible that none of the potential EDCs retain approval by the Commission, and thus, no available Buyer to this RFP?

A. The Commission retains the right to approve or deny any contract resulting from this RFP.

Q11. Would the EDCs accept a financially-settled fixed-price gas agreement as a separate companion to the new generation bids proffered as part of the RFP?

A. No. All offers in this RFP must be backed by a Generating Capacity Resource.