

**REQUEST FOR PROPOSALS FOR PROFESSIONAL SERVICES**  
**STATE OF DELAWARE**  
**DEPARTMENT OF STATE - DIVISION OF THE PUBLIC ADVOCATE**

REQUEST FOR CONSULTING SERVICES RELATED  
TO AN INVESTIGATION BY THE DIVISION OF THE PUBLIC ADVOCATE  
OF THE PROPOSED MERGER BETWEEN EXELON CORPORATION AND PEPCO  
HOLDINGS, INC.

CONTRACT NO. STA - 14 - 002 - EXLPHIDPA

DATE OF ISSUE: June 10, 2014

You are hereby invited to submit a proposal to the Delaware Division of the Public Advocate ("DPA") in accordance with the specifications and conditions contained in this Request for Proposals for Professional Services ("RFP"). Please submit your proposal in the format specified with appropriate data in each section. Offerors should submit an original and five (5) copies of each proposal.

Signed:  /s/ *Andrea B. Maucher* \_\_\_\_\_  
Andrea B. Maucher  
Case Manager  
Division of the Public Advocate

## **I. BACKGROUND:**

Delmarva Power and Light Company (“DPL”) offers electric and natural gas distribution services in Delaware and is regulated by the Delaware Public Service Commission (“DPSC”). On April 30, 2014, Pepco Holdings, Inc. (“Pepco”), DPL’s parent company, and Exelon Corporation (“Exelon”) announced publicly that they had entered into an agreement whereby Exelon would acquire Pepco in an all-cash transaction (the “Merger”). The Merger must receive the approval of the Federal Energy Regulatory Commission (“FERC”) and the utility commissions overseeing Pepco’s regulated activities in Delaware, Maryland, New Jersey, and the District of Columbia.

On May 30, 2014, Exelon and Pepco filed a joint application with FERC for approval of the Merger (Docket EC14-36). Exelon and Pepco intend to file the requisite applications for the required state regulatory commission approvals during the third week of June 2014.

Pursuant to Delaware law ([26 Del. C. §215\(d\)](#)), the DPSC “shall approve any such proposed merger, mortgage, transfer, issue, assumption or acquisition when it finds that the same is to be made in accordance with law, for a proper purpose and is consistent with the public interest.” Section 203(a)(4) of the Federal Power Act provides that FERC shall “approve the proposed disposition . . . if it finds that the proposed transaction will be consistent with the public interest.” 16 U.S.C. §824b(a)(4). Under FERC precedent, “consistent with the public interest” means that the Merger will not harm the public interest; it does not require Exelon and Pepco to show that the Merger positively benefits the public interest. *See, e.g., Texas-New Mexico Power Co.*, 105 FERC ¶61,028 at P 23 & n.14 (2003) (citing *Pacific Power & Light Co. v. FPC*, 111 F.2d 1014, 1016-17 (9th Cir. 1940)). In determining whether a proposed disposition of jurisdictional facilities is consistent with the public interest, the FERC will evaluate the impacts

of the proposed disposition on competition, rates, and regulation. *See Inquiry Concerning the Commission's Merger Policy Under the Federal Power Act: Policy Statement*, Order No. 592, FERC Stats. & Regs. ¶31,044 at 30,111 (1996), order on reconsideration, Order No. 592-A, 79 FERC ¶61,321 (1997) ("Merger Policy Statement"). In addition, FERC must also find that the Merger will not result in cross-subsidization of a non-utility associate company by a traditional utility company, or the pledge or encumbrance of utility assets for the benefit of an associate company, unless that cross-subsidization, pledge or encumbrance will be consistent with the public interest. 16 U.S.C. §824b(a)(4), The DPA has a statutory duty to represent the interests of residential and small commercial businesses in federal and state regulatory proceeding affecting the rates or the services provided by utilities. The DPA has filed a motion to intervene in the FERC docket and will file a statutory notice of intervention in the DPSC proceeding once a docket is opened.

In anticipation of the filing, the DPA is seeking qualified firms and/or individuals knowledgeable in the area of public utility mergers/acquisitions to provide guidance to the DPA in developing its recommendations to FERC and/or the DPSC relating to the proposed Merger. In particular, the DPA seeks expert opinion regarding the synergies, efficiencies and cost savings that Exelon and Pepco have identified in the Merger application filed with FERC (and which the DPA expects will be included in their application to the DPSC); the potential impacts of the Merger – both positive and negative - on DPL's Delaware ratepayers; and the proposed "Customer Investment Fund" to be utilized by Pepco for the benefit of ratepayers. There may be other issues not described herein that the successful offeror(s) may identify, and if so, the DPA expects that the successful offeror(s) will bring such issues to the DPA's attention.

The DPA seeks a firm total not-to-exceed price for complete performance of the tasks identified in Section II below; a list of the individuals who will be performing the tasks; and a description of each individual's qualifications to perform the tasks as set forth in Section VII.

## **II. SCOPE OF WORK TO BE PERFORMED:**

Both the FERC docket and the Delaware docket may be litigated proceedings. The DPA anticipates that the bidder will demonstrate professional expertise and due diligence in developing a work plan for project completion and the not-to-exceed price for services. The successful offeror(s) will be expected to: analyze the merger application, schedules and pre-filed testimonies; draft discovery questions; develop and present direct testimony (and surrebuttal, if necessary); assist in the development of cross-examination of Exelon's and Pepco's prefiled testimony and exhibits; stand cross-examination on direct (and surrebuttal) testimony; and assist DPA Counsel, as needed, in the briefing and presentation of the DPA's case to the FERC and the DPSC. Professional assistance may also be required in the post-hearing phases of the proceedings, which may include the preparation of explanations, summaries, schedules, and exhibits as may be required by the DPA Counsel, by the FERC, or by the DPSC.

The DPA recognizes that the potential exists for the scope of work to expand beyond what was originally contemplated in the proposal; therefore, timely filed requests for supplemental compensation will be considered. To be considered timely, the request must be filed with the DPA sufficiently far enough in advance for the DPA to evaluate it adequately (generally not less than two weeks). All offerors are hereby specifically advised that in order to receive any payment above the accepted not to exceed price, the DPA will require detailed written support demonstrating that the work involved in bringing the matter to conclusion was not, and could not have been, reasonably contemplated at the time the original proposal was

submitted. In the event that it becomes necessary or desirable during the course of the project for the successful offeror to perform additional work not reasonably contemplated within the proposed firm price, it is understood and agreed that **NO** compensation will be paid for such work commenced or undertaken at the direction of DPA Counsel, the Public Advocate, or any DPA employee without the **prior** approval of the DPA.

### **III. DEADLINE FOR PROPOSALS:**

**The DPA must receive all proposals in a sealed envelope marked BID PROPOSAL ENCLOSED no later than NOON on Wednesday, June 25, 2014.** The DPA *will not* consider proposals received after that date. To be received, the proposals must be physically present, by mail or by hand or courier delivery at the Division of the Public Advocate, 401 Federal Street, Townsend Building – Suite 3, Dover, DE 19901.

### **IV. PROPOSED PLANS AND TIMETABLES:**

The offeror's proposal must clearly state all plans for the performance of the proposed review, together with a preliminary discussion of each major element of review proposed. The timetable must estimate the calendar time required, and the proposed elements of the review, including the development of proposed report, cross-examination and preparation of affirmative testimony.

### **V. SIGNATURE ON PROPOSALS AND NUMBER OF COPIES:**

The proposals and all copies must be signed by an officer or partner authorized to bind the offeror contractually. The name, title, address, and telephone number of the officer or

partner (if different from above) who may be contacted during the period of proposal evaluation shall be included. An original plus five (5) copies are required.

## **VI. DPA CASE MANAGER:**

Andrea B. Maucher, Public Utilities Analyst, is designated as the DPA Case Manager.

Her contact information is

Andrea B. Maucher  
Public Utility Analyst  
Division of the Public Advocate  
401 Federal Street  
Townsend Building, Suite 3  
Dover, Delaware 19901  
(302) 857-4620  
andrea.maucher@state.de.us

Ms. Maucher will act as the point of contact and coordinator for the entire project. She will represent the DPA in all aspects of this project and will receive all proposals, invoices, reports, and other correspondence relating to the project. Contact with other members of the DPA Staff is not appropriate prior to the selection of the Consultant. Ms. Maucher will also oversee scheduling and procedural concerns as well as serve as the principal contact for the technical tasks associated with this review. Periodic updates should be provided to Ms. Maucher as the review progresses, at least on a bi-weekly basis.

## **VII. PERSONNEL ASSIGNED:**

Proposals must include an organizational chart listing the partner or officer in charge or the project manager; each person that will be assigned to the project; each person's position within the firm; each person's billing rate; each person's experience; each person's specific contribution to be made to the project; the estimated billable hours for each person; and such

other pertinent information as the proposer deems necessary. No persons other than those listed in the offeror's original proposal will be permitted to work on the project without Ms. Maucher's prior express approval.

Using the format below, provide a breakdown of the price of the proposal by hourly rates for every professional individual. Charges for non-professionals such as secretarial and typing support may be aggregated under "other fees or expenses."

| <u>NAME</u>                | <u>BILLING<br/>RATE</u> | <u>HOURS</u> | <u>EXPENSES</u> | <u>TOTAL</u> |
|----------------------------|-------------------------|--------------|-----------------|--------------|
| Partner                    |                         |              |                 |              |
| Project Manager            |                         |              |                 |              |
| All Others (by name)       |                         |              |                 |              |
| All Other<br>Fees/Expenses |                         |              |                 |              |

Your application should include a résumé for each person who will be assigned to the project indicating the individual's knowledge of the subject areas for this project and the qualifications applicable to the performance of the project. In addition, please list in your proposal three (3) current references for each person, along with addresses and current telephone numbers of the reference. The DPA may contact these references in the evaluation of the proposals received.

**VIII. RELATED PROJECTS:**

Each proposal must list all projects currently in progress or completed within the last two (2) years which the offeror considers to be similar to this project. Each project should be described in sufficient detail to permit comparison with the subject matter of this RFP. Please place this information in an appendix to your proposal.

## **IX. CONFLICTING INTERESTS OR EMPLOYMENT:**

Any individual or firm submitting a proposal is required to review its prior and existing employment, and that of its personnel, to insure that there are no interests that could reasonably be deemed to conflict with the work which is the subject matter of this RFP. The DPA wishes to avoid even the appearance of impropriety; therefore, any doubts in this regard should be resolved in favor of full disclosure. The successful offeror, and the personnel employed on the project, must not have any direct or indirect financial or business interest with PSC-regulated companies or with Exelon or any of its related companies that would or could be reasonably thought to affect the exercise of independent professional judgment throughout the proceedings contemplated by this RFP.

Even though not state employees, the offeror should read and be familiar with the terms of 29 *Del. C.* Ch. 58 - "Laws Regulating the Conduct of Officers and Employees of the State" so as to assist them in avoiding any improper conduct. In addition, 26 *Del. C.* §109 provides:

No person shall be eligible for appointment to or shall hold the office of Commissioner, or be appointed by the Commission to hold any office or position under it, who is a director, officer or employee of any public utility or owns or directly or indirectly controls any stock of any public utility entitled to vote for election of directors. No Commissioner, and no employee, appointee or official engaged in the service of or in any manner connected with the Commission shall hold any office or position, or be engaged in any business, employment or vocation, the duties of which are incompatible with the duties of his office as Commissioner, or his employment in the service or in connection with the work of the Commission.

## **X. FIRM OFFER:**

All proposals must contain a **conspicuous** statement within the proposal that the proposal is a firm offer for a period of not less than six (6) weeks from the deadline for proposals.

## **XI. PRICE:**

The contract resulting from the DPA's formal acceptance of the Proposal will be on a "NOT TO EXCEED" basis. Your proposal should be realistic for the approach you propose and should enable you to give the DPA the full benefit of your best professional judgment and efforts.

Flexibility between classes and among members of the project team is permissible so long as the maximum price is not exceeded.

In addition to the above format, each proposal must contain the following statement:

**The DPA shall pay (offeror) as full compensation for all authorized work performed and accepted including all costs, fees, and expenses, an amount not to exceed \$\_\_\_\_\_.**

All price information shall be included in your proposal.

The DPA will pay only reasonable expenses. The DPA reserves the right to disallow expenses that the DPA determines are not reasonable and necessary. Inasmuch as the proposed services will be for a state agency, the successful offeror should make every effort to keep costs of hotels, meals and transportation to a minimum. When considering future proposals from an offeror, the DPA may consider its previous experience with an offeror relating to this issue.

## **XII. ACCEPTANCE OF PROPOSAL:**

If the DPA accepts your proposal, the DPA will provide a written agreement for you to execute. Until a formal notice of acceptance is issued, however, no communication, either written or oral, by the Public Advocate or DPA employee, shall constitute or be interpreted as a promise of or actual acceptance of any proposal.

The DPA will issue a formal notice of acceptance in writing to the successful offeror. Such formal notice of acceptance is required prior to the creation of a contractual relationship between the successful offeror and the DPA. By submitting a proposal, an offeror specifically agrees to perform no services chargeable to the DPA or the State of Delaware under or in connection with this RFP or the subject thereof until receipt of formal notice of acceptance. The rights and obligations of the successful offeror and the DPA shall not be effective, and neither the successful offeror nor the DPA shall be bound by the terms of a tentatively accepted proposal, unless and until a validly executed purchase order has been approved by the Office of the Secretary of Finance of the State of Delaware. Performance of services contemplated by this RFP shall not begin prior to the issuance of a formal notice of acceptance by the DPA and receipt of a validly executed purchase order.

To facilitate the processing of the proposal of the successful offeror, the following tentative acceptance paragraph should be provided at the end of your proposal:

If this proposal meets with DPA approval and we are selected as the successful offeror, you will so indicate by providing us with a contract for our execution. We understand that this acceptance is conditioned upon approval by the Office of the Secretary of Finance of the State of Delaware of a validly executed purchase order for the work to be performed in connection therewith. We will perform no services under this proposal to be charged to the DPA or to the State of Delaware and will not consider a binding contractual arrangement to have been entered into until the issuance by the DPA of a formal notice of acceptance stating that a validly executed purchase order for services to be performed in accordance with this proposal has been approved by the Office of the Secretary of Finance of the State of Delaware. We acknowledge that all terms, conditions, and assurances contained in the RFP to which this proposal responds are accepted and incorporated by this proposal.

Accepted this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

By:

\_\_\_\_\_  
Division of the Public Advocate

### **XIII. FACTORS THE DPA MAY CONSIDER IN THE SELECTION PROCESS**

The DPA will normally evaluate the proposals that meet the specifications of this RFP on the basis of its consideration of the following factors (*10 points each*):

1. Demonstrated ability to understand and perform the assignment in an expeditious and professional manner.
2. Description of the work product to be produced.
3. Demonstrated knowledge and understanding of public utility regulatory proceedings of a similar nature.
4. The quality of the staffing plan and qualifications and past experience of the personnel assigned to work on the project.
5. The specific approach proposed for the project, including the time requirements for different phases of the project, if any.
6. The DPA's prior experience with the offeror's work product and services.
7. Responses and recommendations of listed references.
8. Existence of conflicting or potentially conflicting interest or employment of the appearance of such conflicts.
9. Total price of proposal and the components thereof.
10. The DPA's overall impression of the offeror from the form of the proposal

### **XIV. ASSURANCES:**

By submitting a proposal in response to this RFP, the offeror assures the DPA that he/she/ it has or will, prior to performing any work to be billed to the DPA in connection with the project which is the subject matter of this RFP, secure all necessary licenses or permits required by the Division of Revenue and other appropriate agencies and departments of the State of Delaware to perform work of the nature contemplated by this RFP.

## **XV. INDEPENDENT CAPACITY AND ASSIGNABILITY:**

The successful offeror and any agents and employees thereof shall, in the performance of work under the proposal and this RFP, act in an independent capacity and not as officers or employees of the State. The successful offeror shall neither assign nor transfer any interest under the contract resulting from this RFP without the prior written consent of the DPA.

## **XVI. INDEMNIFICATION:**

The successful offeror agrees to indemnify, defend, and save harmless the State of Delaware, its officers, Commissioners, employees, and agents from any and all claims and/or losses accruing or resulting to persons, firms, or corporations who may be injured or damaged by the successful offeror in the performance of its duties and responsibilities under the proposal accepted by the DPA and also from and against any liability, including costs and expenses, for violation of proprietary rights, copyrights, or rights of privacy or confidentiality arising out of the publication, translation, reproduction, delivery, performance, use or disposition of any data furnished pursuant to this engagement or based on any libelous or otherwise unlawful matter contained in such data.

The successful offeror agrees that it will also provide or cause to be provided, at no further cost to the DPA, such additional professional consulting services as may be necessary to rectify or otherwise correct the effects of any errors or omissions resulting from the negligent performance or non-performance by the successful offeror, its employees, agents, or assigns of its reasonable duties and responsibilities in connection with the subject matter of this RFP.

## **XVII. ACCESS TO RECORDS AND RIGHT TO AUDIT:**

The successful offeror agrees that the DPA, through its duly authorized agents or employees, shall have the right to audit and examine such books, records, time cards, and other material in possession or control of the offeror as may be deemed necessary to verify fees, charges, or expenses billed to the DPA in regard to the project which is the subject of this RFP.

## **XVIII. CONFIDENTIALITY OF PROPOSALS, WORK PAPERS AND MATERIALS**

The proposal filed in response to this RFP will be considered a public document and will be available for public inspection upon receipt by the DPA.

The successful offeror agrees that the DPA shall own and have unlimited right to all interim and final written testimony, exhibits, or reports, and that the offeror shall not assert any rights or establish any claim under existing copyright, patent, or data law as to such material or processes. Further, the offeror agrees that upon request it will turn over to the DPA original or legible copies of all work papers created by offeror in support of its testimony, exhibits, or reports during the course of this engagement within thirty (30) days following the deliberation and decision by the Commission on the subject matter of this RFP.

## **XIX. PAYMENT:**

The successful offeror shall submit monthly detailed bills to the DPA for services performed to that point in time. Subject to review and audit by the DPA, such invoice will be promptly processed and paid.

## **XX. TERMS AND CONDITIONS:**

This RFP neither commits the DPA to enter into a contract nor to pay any cost incurred in the preparation of a proposal in response to this request. The DPA reserves the right to accept or reject any or all proposals received, to negotiate with all qualified sources, or to cancel or modify this RFP in whole or in part. The DPA reserves the right to request additional written data, information, oral discussion, or presentations in support of any written proposal or portion thereof that are deemed necessary to clarify any aspect of the proposal.

The DPA reserves the right to enter into negotiations with one or more offerors concerning the subject matter of this RFP independent from the proposals which may be submitted in response to the RFP, and the DPA may accept any proposal with or without modifications acceptable to the offeror without conducting further written or oral discussions with any offeror, and the DPA shall be under no obligation to explain to any offeror whose proposal is not accepted the reasons for such non-acceptance. By submitting a proposal, the offeror agrees that it will not seek such explanation for non-acceptance of its proposal.

## **XXI. TERMINATION OF AGREEMENT FOR CAUSE:**

The offeror understands and agrees that if, through any cause or for any reason, he/she/it shall fail to fulfill the obligations under the successful proposal in a timely and proper professional manner, or shall violate any of the terms and conditions of this RFP, the DPA shall have the right to terminate the agreement by giving written notice of such termination to him/her/it specifying the effective date of such termination, which shall not be earlier than the

mailing of such notice. In the event of such termination, all finished or unfinished documents, data, studies, testimony, exhibits, or other material prepared or being prepared pursuant to the project shall, at the option of the DPA, become its property and the successful offeror shall be entitled to receive just and equitable compensation for any reasonably satisfactory work performed.

## **XXII. TERMINATION FOR CONVENIENCE OF DPA:**

The DPA reserves the right to terminate this project at any time, either before or after acceptance of the proposal. Such termination, when made prior to the issuance of formal notice of acceptance of a proposal, may be accomplished by telephone or mail. Such termination, when made after issuance of formal notice of acceptance of the proposal, shall be accomplished by notice of termination which shall be made in writing and which shall be effective upon receipt by the successful offeror.