State of Delaware
Division of Facilities Management
540 South DuPont Highway
Suite 1
Dover DE 19901

Request for Proposal

For

A Statewide Contract for Competitive Supply of Electricity

Solicitation No. #####
July 25, 2022

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1. OVERVIEW & PURPOSE OF RFQ

The State of Delaware (hereafter referred to as "the State") was in an electric supply contract with Talen Energy including approximately 2,150 Delmarva Power accounts ("ACs") with a total usage of approximately 311,000,000 kwhrs/year. The 4-year contract was due to expire in July '23 but all ACs are now back on Delmarva's tariff supply after Talen declared bankruptcy and cancelled the contract in May '22. The previous contract included 50% renewable energy credits ("RECs") and the new contract will also include a certain portion of RECs between 35% and 100%, yet to be determined. The facilities include all state government facilities, office buildings, prisons, public school districts, higher education facilities, county government facilities, and some municipal government facilities, charter schools & volunteer fire companies, pursuant to a Memorandum of Agreement (Exhibit 2), which has signatories from over 80 organizations statewide. The City of Wilmington is not part of this contract. The State of Delaware will be the contracting entity for all ACs; there will not be 80+ contracting entities. The MOA, Appendix and list of MOA signatories will be provided as reference to show that the State and each of these entities have agreed to be part of and bound by the State's electric supply contract.

While a State agency or an Aggregation Partner can terminate its MOA with the State, that decision does not absolve the State agency or Aggregation Partner from its prior commitment and contractual obligations within the State's aggregate purchase if the termination occurs after the supply contract is awarded. If a State agency or an Aggregation Partner fails to pay the Supplier the amounts owed, the Supplier has the right to collect the past due amounts from that State agency or that Aggregation Partner, and if the State agency or the Aggregation Partner continues to be delinquent, then the Supplier can declare it to be in default and exercise the Supplier's rights within the scope of the contract. The State's Office of Management & Budget and the State's energy consultant, Affinity Energy Management ("AEM"), will assist the Supplier in collecting the amounts past due to avoid or remedy an event of default by a State agency or an Aggregation Partner; however, the State will not be responsible for the payment of any amounts past due, written off, damages, etc. of an Aggregation Partner.

After a contract is executed, the State will provide a contact list of the State agencies and the Aggregation Partners to the Supplier so the Supplier may contact them directly as needed.

All but 1 AC is served by Delmarva Power. That 1 AC is served by PECO along a highway at the DE-PA state line. Almost all ACs are on a commercial tariff rate with approximately 30 residential rate ACs also included. As a precursor to issuing this RFP, the State requested and received responses to the previously issued RFQ from interested licensed electric suppliers. Licensed electric suppliers that are receiving this RFP have been deemed qualified and approved to participate in the State's RFP. Each qualified supplier is being provided an account list, Contract Terms & Conditions herewith and is invited to submit pricing proposals as specified within this RFP. A final executable round of bidding will be conducted with the qualified supplier's bids being submitted through a blind bid process or at the State's discretion, the final round of bidding may be conducted using a reverse auction platform. It is the State's intent to execute an all-inclusive flat fixed price contract for a term length of 1 to 5 years.

2. PROCUREMENT SCHEDULE

EVENT	**DATE**	**TIME**
RFQ Issued to all interested licensed DE Suppliers	June 30, 2022	11:00 AM EDT
Suppliers deadline to submit questions related to the RFQ	July 8, 2022	5:00 PM EDT
Suppliers response to RFQ due via Email	July 14, 2022	5:00 PM EDT
Formal RFP issued to approved suppliers	**July 25, 2022**	**12:00 Noon EDT**

Suppliers deadline to submit questions related to the RFP	August 1, 2022	12:00 Noon EDT
Full list of all questions & answers provided to all Suppliers	August 3, 2022	12:00 Noon EDT
Suppliers response to RFP due via Email	August 5, 2022	5:00 PM EDT
Suppliers request for consideration of any changes in terms & conditions due via Email	August 12, 2022	5:00 PM EDT
Refresh prices submitted as needed and final approval of contract terms	Mid-Late August 2022	Days & Times tbd
Suppliers submit signed acknowledgement form including any approved contract amendments	2 Days prior to final executable pricing round	Day & Time tbd
Final executable prices submitted and contracts executed	Late Aug. to Early Sep. 2022	Day & Time tbd

The State may adjust the issue and due dates listed in the Procurement Schedule as required.

3. CONTACT INFORMATION

The State has engaged the services of Affinity Energy Management to coordinate the RFP and contracting process. Questions and all responses should be directed to Ed Jackson and Chad Jackson of AEM and you may copy or contact Megan Garrett as needed.

	Division of Facilities Management	**Affinity Energy Management**
Contact:	Megan Garrett, Energy Resource Mgr.	Ed Jackson, Principal
Address:	540 South DuPont Highway, Suite 1 Dover DE 19901	220 Cherry Blossom Place Hockessin, DE 19707
Telephone:	(302) 739-5644	(302) 218-8920
Fax:	(302) 739-6148	(866) 480-7811
Email:	Megan.Garrett@delaware.gov	Ed@AffinityEnergy.net
		Chad Jackson, Energy Consultant 302-593-7545 Chad@AffinityEnergy.net

4. PRE-QUALIFICATION REQUIREMENTS

This procurement is exempt from the requirements of 29 *Del. C* § 6901, et seq. (commonly referred to as the State Procurement Code) pursuant to 29 *Del. C* § 6902 (17). The procurement process is performed in accordance with 75 Del. Laws, c. 243 and FY22 Budget found in Senate Bill No. 235 Section 23. This procurement is being conducted through a multi-step process and will be awarded to the responsive and responsible supplier providing the best value bid for all ACs or groups of ACs. Licensed electric suppliers that are receiving this RFP have been deemed qualified and approved to participate in the State's RFP. However, the State reserves the right to award a contract

based on the overall evaluation criteria listed below and does not guarantee that the State will select a supplier from the subset of qualified suppliers based on price alone.

5. DATE & TIME OF RFP RESPONSES

Responses are due from suppliers by **5:00 PM EDT on August 5, 2022**. Suppliers may request consideration of any changes in terms & conditions through **5:00 PM EDT on August 12, 2022.** Responses should be provided via email sent to Ed@AffinityEnergy.net and Chad @AffinityEnergy.net. Bidders are welcome to submit questions via email to Ed@AffinityEnergy.net and Chad @AffinityEnergy.net through Noon EDT on August 1, 2022. The original questions and answers will be sent back out to all suppliers invited to participate in the RFP process and will be included as Attachment F to the final, executed contract and incorporated by reference therein. Please note that published questions and answers will be the equivalent of an amendment or supplement to the original RFP contract and be binding on both the State and the selected Supplier(s) if any answer alters or clarifies the original RFP language.

6. EVALUATION PROCESS & CRITERIA FOR RFP RESPONSES

The following unranked criteria will be used to evaluate licensed electric suppliers' responses on the basis of the information submitted. The State may request additional information during the evaluation process, but the State will not be obligated to accept unsolicited information or data provided after the closing date and time noted in this document.

Evaluation Criteria

1. Experience and reputation
2. Capacity to perform the services and meet the contractual requirements
3. Demonstrated ability to manage an aggregation of accounts including providing accurate and timely billing of charges
4. Ability to include renewable energy credits (RECs) within the electric supply contract including DE sited RECS & DE sited SRECs
5. Experience with public sector customers
6. Financial strength
7. Price

Those suppliers that have been qualified are being invited to participate in the formal RFP process. The final award(s) will be based on lowest cost per kWh for established price groupings and in the best interest of the State. With respect to any supplier, nothing in this Solicitation is intended to, nor shall be interpreted, to grant, create, or suggest any right, privilege, or entitlement to receive an award.

It is the intent of the State to award a contract(s) to supplier(s) on the basis of "best value" to the State. The State will consider items such as supply term and price when determining the "best value." The State reserves the right to reject any and all quotes received if it is determined that it is in the best interest of the State.

7. SINGLE OR MULTIPLE SUPPLIERS FOR CONTRACT PERFORMANCE

Multiple suppliers may be awarded a Contract. Since there is only one utility delivery company ("Delmarva Power") involved, a contract may be awarded for the entire group of all ACs at one weighted average fixed price for all ACs or contracts may be awarded by rate class or load factor. The State will be utilizing the contract terms and conditions here within that were used in 2019 with a few modifications. We are requesting a minimum bandwidth of 20% measured across all ACs cumulatively, inclusion of a certain percentage of RECs, consolidated utility billing, a small volume allowance for the addition of new ACs during the term and no re-opener or pass-through charges if

account's Capacity & Transmission PLC's change during the term of the contract. The State will not consider dual billing.

8. ACQUISITION METHOD TO BE USED FOR CONTRACT(S)

The State is requesting proposals for the supply of all electricity commodity components up to the Delivery Point including but not limited to generation of firm electricity, energy, RPM capacity & Capacity Performance, transmission (including TECs), transmission loss credits, FERC TEC settlement charges/credits, Balancing Congestion Charges (BCC), RMR, scheduling & balancing, losses, reactive charges, Auction Revenue Rights Credits, costs associated with FERC Order 745 and any ancillary and/or incidental services and other ISO costs to various facilities in the State. All facilities are located in Delaware served by Delmarva Power as the Electric Distribution Companies (EDC) except 1 Peco AC located in proximity to the Delaware and Pennsylvania state line.

At the conclusion of the final round of executable bidding, the State will issue notice of award by email to the selected Supplier(s) on behalf of all agencies and accounts listed in the Exhibit 1. Notice of award is official and binding, and the selected Supplier(s) will receive a notice of award e-mail within one hour of the designated time of the executable round of bidding. The counter-signed Acknowledgment Page will be emailed to the selected Supplier(s) within 24 hours of award.

9. ACKNOWLEDGMENT OF THE TERMS AND CONDITIONS

All invited suppliers must sign the Acknowledgement contained in Attachment A by the date provided in Section 2. Procurement Schedule of this Solicitation. By signing this Acknowledgement of the Terms and Conditions contained in this Solicitation, the supplier agrees that the Terms and Conditions of this Solicitation will be applicable to each Contract that is expected to result from a subsequent award (see Governing Agreement for more information). Suppliers that do not provide this Acknowledgment will be precluded from the final round of bidding. The requirement may only be satisfied by executing and returning the Acknowledgment. The State will review any requested changes, additions or deletions of specific terms and conditions submitted by suppliers through Amendment(s) submitted in advance by a supplier. The State will communicate its acceptance or rejection of any such Amendments prior to the final round of executable bidding. **Suppliers must submit an Amendment for the State's consideration as soon as practical to allow timely evaluation and response**.

10. CONTRACT TERM

The selected Supplier(s) will supply the full requirements of such electricity for terms of either twelve (12), twenty-four (24), thirty-six (36), forty-eight (48), or sixty (60) full monthly billing cycles for each account included in Exhibit 1. Descriptions of the pricing products being requested can be found in the Terms and Conditions Section of this Solicitation. The start date shall be the first meter read date on or after May 1, 2023 for all but 4 accounts as noted on the account list. These 4 accounts are currently on Delmarva's hourly tariff supply rate so we need them to start on their Sep. 2022 meter read dates, but all terms will end in May of a subsequent year. Also, one flat, fixed rate for all accounts regardless of start date. Though pricing is being requested for various term lengths, suppliers are not obligated to provide pricing for all term lengths. The State has never executed an energy supply contract longer than a 4-year term.

The State may request an extension of performance in accordance with the existing Contract terms and conditions. Whatever Contract term the State awards (12, 24, 36, 48 or 60 months) the State will have the option to renew two times for up to twelve (12) additional months per renewal. The Contract price(s) for any extension between the State and the Supplier(s) will be based upon mutually agreed price(s).

In the event that a new Contract has not been awarded prior to the new Contract expiration date and the State and the Supplier(s) have not agreed on a Contract extension, service for the affected Accounts will revert back to the EDC's "standard offer service".

11. FEE STRUCTURE

The Supplier(s) hereby agrees to include a procurement fee, to be paid to AEM, on all accounts served through this Contract which will be included in the Supplier(s)' price. The exact AEM fee will be communicated to all suppliers prior to the final round of bidding but will not exceed $0.000500 per kWh and will be no less than $0.000333 per kWh. For the purposes of this RFP, the Supplier should assume that the fee will be $0.000333. The fee for any performance extensions will be the same as the final fee determined for the base Contract. This fee will be paid by the selected Supplier(s) directly to AEM in accordance with the existing broker/agent agreements between the Supplier(s) and AEM. The Supplier(s) shall be responsible for providing a summary accounting of the monthly volume of electricity delivered and resultant fees paid to AEM per account each month in accordance with the existing broker/agent agreements between the Supplier(s) and AEM.

12. TERMS AND CONDITIONS

The following are the terms and conditions for any awarded contract:

A. DEFINITIONS

Account: As defined by the relevant Electric Distribution Companies (EDC) and identified in the relevant Exhibit 1 and any mutually agreed upon amendments thereto.

Adjusted Market Cost ($): In the case of a pricing group *consuming more kWh than the Maximum Monthly Estimated Consumption Amount plus applicable bandwidth*, the following formula will be used to calculate the adjusted cost to be applied to the volumes above the bandwidth. Adjusted Market Cost: ((Consumption During Billing Period) – (Maximum Monthly Estimated Consumption plus applicable bandwidth)) x (Day Ahead Load Weighted Average).

Billing Period: The period between actual or estimated meter reads as used by the EDC for billing purposes.

Construction Projects: Projects that involve remodeling, replacement or upgrades of electrical equipment including but not limited to HVAC, lighting, on-site PV solar, combined heat & power ("CHP") additions and deletions of facilities and may cause a variance between historical and actual electrical usage.

Consumption During Billing Period: A. In the case of a pricing group with one utility account, Consumption During Billing Period will be the amount of kWh consumed during a single utility billing cycle. B. In the case of a pricing group with more than one utility account, Consumption During Billing Period will be the consumption per calendar month calculated by pro rating the consumption of each account and summing the pro-rated totals to arrive at the Consumption During Billing Period to correspond with the calendar month. Actual monthly calendar data will be used for ACs with hourly interval metered data available from the EDC.

Contract: Includes this RFP, all Attachments and Exhibits and the RFQ.

Day Ahead Load Weighted Average: The average price per kWh over a Billing Period calculated by summing the product of the kWh consumed for each hour of an account's Hourly Consumption Profile by the PJM Day Ahead hourly price for the respective EDC zone for the corresponding hour and dividing the sum by the total amount of kWh consumed over the period.

Events of Default: the failure of the State to make payment as required under this Solicitation, or any representation or warranty made by the applicable party proves to be false or misleading in any material respect; or the failure of the applicable party to perform its obligations under this Solicitation and such failure is not excused by force majeure; or the applicable party (i) makes an assignment or any general arrangement for the benefit of creditors; or (ii) files a petition or otherwise commences, authorizes or acquiesces to a bankruptcy proceeding or similar proceeding for the protection of creditors, or have such petition filed against it; or (iii) otherwise becomes insolvent; or (iv) is unable to pay its debts as they fall due; or (v) fails to establish, maintain or extend credit in form and in amount acceptable to the Supplier when required; or (vi) the State, one of its State agencies, or one of its

Aggregation Partners switches to another third party supplier before the end of a contract term and does not agree to return to the original supplier serving the State, State agency's or Aggregation Partner's account within 2 billing cycles of being notified that an account had prematurely switched to another supplier.

Full Requirements Electricity Supply: All components of firm electricity supply, including but not limited to energy charges, Balancing Congestion Charges (BCC), transmission including transmission enhancement charges ("TECs"), transmission loss credits, FERC TEC settlement charges/credits, RPM Capacity charges including Capacity Performance, RMR, scheduling & balancing, reactive charges, Auction Revenue Rights Credits, costs associated with FERC Order 745, ancillary services, line losses, and other ISO costs under all applicable requirements by PJM, Supplier coordination tariffs and agreements, LMP adjustments, customer account management activities including all fees, billing and reporting requirements under this Contract, but not including other costs and rates related to the delivery or distribution of electricity by the EDC.

Such firm, full requirements electricity shall be equivalent to the relevant EDC's "standard offer service" product.

Renewable Electricity Supply (Green): For any Renewable Electricity Supply (i.e. in addition to the State RPS provided by the EDC) requested as part of this Solicitation, Renewable Energy Certificates (RECs) from the following energy sources are eligible: solar photovoltaic, wind, and geothermal. Additional energy sources are eligible only if they meet the requirements set forth by the EPA's Green Power Partnership in their Partnership Requirements document issued September 2017: hydropower, biomass, biodiesel, fuel cells, and cogeneration. The RECs must be retired on behalf of the State, reported annually and generated from a U.S.-based facility installed within the last 15 years (on or after January 1 of the year 15 years prior to the current date). It is preferred but not required that the RECs be Green-e certified, except for Delaware RECs and Delaware Solar RECs. The Supplier must provide documentation for any REC not Green-e certified verifying that it meets all requirements stated here within. The Supplier must provide annual documentation including but not limited to: Green-e certification documentation, REC tracking system account retirement report, and the contract attestation report. Green power procured during the 12-month reporting period must be either generated during that reporting period, generated during the six months immediately preceding the reporting period, or the three months immediately following the reporting period. Note the DE RECs and DE SRECS must be sited in DE. Suppliers are welcome to purchase DE RECS and/or DE SRECS from the DE Sustainable Energy Utility by contacting Tony DePrima, Executive Director at Tony.DePrima@deseu.org, 302-883-3048. The State will accept DE SRECs in lieu of DE RECs as long as there is no change in price or rate once the contract is executed. The final percent and/or amount of RECs the Supplier is required to supply shall be considered "load following" including any accounts added within the 3% allowance during the term, but based on estimated quantities at time of contract award.

Hourly Consumption Profile: The consumption profile for an electricity account which describes the actual amount of electricity consumed per hour over a given period of time. In instances where an Hourly Consumption Profile is needed but an account is not equipped with interval metering equipment, the generic profile supplied by the account's EDC for that account's rate class and/or strata should be used. To the best of the State's knowledge, at the time of this RFP, all Delmarva Power accounts now have smart meters and hourly data is available at an account level through Delmarva Power.

RPM Capacity: Reliability Pricing Model capacity as defined by PJM. The location and/or zone in the context of this definition will be defined by PJM.

Maximum Monthly Consumption Amount: The maximum amount of electricity a pricing group can consume measured in aggregate during a Billing Period without being subject to the Adjusted Market Price.

Renewable Energy Portfolio Standard (RPS): The EDC is responsible for providing customers with minimum levels of electricity generated from Eligible Energy Resources. For more information, please visit: http://www.dnrec.delaware.gov/energy/information/otherinfo/Pages/Renewable.aspx

B. PRICING PRODUCT DEFINITIONS

Firm Fixed Price: Bids for this pricing group should consist of a single price per kWh for Electricity Supply

Firm Fixed Price, X% Renewable: Bids for this pricing group should consist of a single price per kWh for Electricity Supply where X% of the electricity must be generated from resources as described in the definitions section and as specified in the Bid Template. The X% must be over and above the current mandated RPS requirement provided by the EDC.

Bandwidth: The Maximum Monthly Consumption amount for each pricing product will be specified in Exhibit 1 after the Supplier retrieves the most recent usage history from the EDC prior to final contract award. The Maximum Monthly Consumption will be a percentage above the volumes listed in Exhibit 1. Maximum Monthly Consumption amounts will be based on total volumes at the pricing group level instead of the account level. Pricing products will not have a Minimum Monthly Consumption Amount. For any volumes used over the Maximum Monthly Consumption Amount, the Supplier will calculate the Adjusted Market Cost and divide this total by the volume that exceeded the Maximum Monthly Consumption Amount (not the baseline volumes) to determine the cost per kWh for the volume that exceeded the Maximum Monthly Consumption Amount. For suppliers whose practice it is to not apply restrictions or are willing to offer a bandwidth above 20% at no additional price premium, please convey this information to the State with your response on the Bid Pricing Template. The State will take this into account when determining the best value bid.

C. GENERAL

Upon signing this contract, the Supplier agrees to supply, and the State agrees to purchase full requirements electricity, as defined later in this section, for all accounts awarded to the Supplier through the final round of bidding and contract award beginning on the start date listed in Exhibit 1. The electricity provided under this Contract shall conform to the tariff of the interstate/intrastate transmitting utility and the Electric Distribution Companies ("EDC") at the Delivery Points for the accounts specified in Exhibit 1.

The electricity supplied shall be delivered to the State through its EDC. The Supplier shall be liable for all penalties assessed by the Independent System Operator ("ISO") to facilities for the non-delivery of firm requirements. Any service interruptions, loss of service or deterioration of electric services that are the fault of the EDC or Pennsylvania-New Jersey-Maryland Interconnection ("PJM") will not be the responsibility of the Supplier. The Supplier shall, however, be responsible for all requirements and associated costs imposed on competitive suppliers by PJM or its successors, as well as for all nominations, balancing and any penalties and charges related thereto.

During the term of the contract the Supplier shall be responsible for filing all notices with the EDC to accommodate accounts added or removed from the contract and notify AEM, the State or its designee of any AC drops or AC number changes on a timely basis.

At the conclusion of the contract, the Supplier shall be required to file all required notices with the EDC and to work with the EDC and one or more licensed electric suppliers to ensure each account is switched to a new supplier by the start date of the State's contract with the new supplier.

Supplier shall promptly notify the State if the Supplier learns that the EDC has removed an account from the supply contract and placed it on "standard offer service" other than in connection with the expiration of a Contract. If the Supplier fails to notify the State, a true-up will be implemented consistent with the difference between the rate for such "standard offer service" and the rate charged by the Supplier if the account remains on "standard offer service" for longer than 1 billing cycle.

D. DATA EXHIBIT

Exhibit 1 includes the following information:

a. EDC account number;
b. Agency/Dept. name;
c. Customer/Facility name;
d. Service/Physical address;
e. Historical annual consumption (kWh) if known;
f. EDC rate schedule if known;

Each supplier is required to retrieve all account usage histories, rate schedules, hourly data for interval metered ACs, Capacity & Transmission PLCs, etc. directly from Delmarva Power for pricing.

E. DEFAULT AND TERMINATION

In the event of a Default, the non-defaulting Party shall provide the defaulting Party notice of the Default and an opportunity to cure within thirty (30) days of Default. Upon Default the non-defaulting Party may immediately suspend its performance, accelerate outstanding payments into a single net settlement amount and terminate this Contract or any affected portion hereof (e.g., an Addendum) without further notice. Any termination shall not constitute a waiver of any remedy to which the non-defaulting Party may be entitled to at law or in accordance with this Agreement. Any account closings or drops or an increase or decrease in usage for any specific account are not considered an event of Default unless it were switched to another supplier prior to the end of the contract term and do not agree to return to the original supplier serving the State, State agency's or Aggregation Partner's account within 2 billing cycles of being notified that an account had prematurely switched to another supplier.

As of the date of termination, any pre-existing unresolved claim or dispute by either Party, including but not limited to, money owed, performance due, or any other obligations of the Parties, that is the result of the other Party's performance or non-performance, will, by its terms, survive termination of this Agreement and will be resolved in accordance with the terms and conditions of this Agreement. All indemnity, confidentiality, warranty and unperformed obligations will survive termination of this Agreement.

F. WRITTEN NOTICE

Any notice shall be deemed delivered and received when submitted in writing, in person or when delivered by any other appropriate method evidencing actual receipt by the State or the Supplier. Any written notice of termination or suspension delivered to the Supplier shall state the effective date and period of the notice, the reasons for the termination or suspension, if applicable, any alleged default or failure to perform, a reasonable period to cure any alleged default or failure to perform, if applicable, and any instructions or restrictions concerning allowable activities, costs or expenditures by the Supplier during the notice period.

G. CONFIDENTIALITY

Subject to the requirements of the State of Delaware Freedom of Information Act, the Supplier will maintain the confidentiality of information submitted by the State prior to, during and after the termination of the contract. Access to the State's data shall be restricted to only those Supplier's employees and/or third parties who need such access in order for the Supplier to adhere to this Contract. The Supplier is advised that the State will make all contract prices publicly available for the full contract period upon contract award or awards.

H. NON-APPROPRIATION

Validity and enforcement of this Agreement is subject to appropriations by the General Assembly of the specific funds necessary for contract performance. Should such funds not be so appropriated Delaware may immediately terminate this Agreement, and absent such action this Agreement shall be terminated as to any obligation of the State requiring the expenditure of money for which no specific appropriation is available, at the end of the last fiscal year for which no appropriation is available or upon the exhaustion of funds.

I. GOVERNING AGREEMENT

Unless a waiver is granted by the State, the provisions contained herein supersede any conflicting or additional provisions in any supply agreement submitted by the Supplier. Any material conflicting or additional provisions which the Supplier wishes to govern the final supply agreement must be approved by the State prior to the final round of executable bidding and award via a fully executed Amendment. Any material provisions contained herein which the Supplier wishes to remove from the final supply agreement must be approved by the State prior to the final round of executable bidding and award via a fully executed Amendment. Any agreed to changes in terms and

conditions between the State and the Supplier will be memorialized through an Addendum and remain confidential between the State and the Supplier or to the extent permissible under 29 *Del. C.* § 10001, *et seq.*

J. ASSIGNMENT

This Contract may be assigned or transferred by a Party without prior approval of the other Party only under two conditions: 1) If the transferring Party's successor is acquiring a majority' of the shares and/or the assets of the transferring Party, whether by merger or acquisition, and the successor has an equal or better creditworthiness than the assigning Party, or 2) If the Contract is being assigned to any wholly-owned subsidiary of the transferring Party or that Party's parent, and the successor has an equal or better creditworthiness than the assigning Party. In all other circumstances any assignment or transfer requires thirty (30) days written notice by the assigning Party and shall be subject to prior written approval by the non-transferring Party, which approval shall not be unreasonably withheld. Any assignment or transfer hereunder shall be made subject to the written assumption of the terms of this Contract by the approved successor.

K. INDEMNIFICATION

Supplier shall indemnify and hold harmless the State, its agents and employees, from any and all liability, suits, actions or claims, together with all reasonable costs and expenses (including attorney's fees) arising out of (A) the negligence or other wrongful conduct of the Supplier, its agents or employees, or (B) Supplier breach of any material provision of this Agreement not cured after due notice and opportunity to cure, provided as to (A) or (B) that (i) the Supplier shall have been notified promptly in writing by Delaware of any notice of such claim; and (ii) the Supplier shall have control, subject to the approval of the State which shall not be unreasonably withheld, of the defense of any action on such claim and all negotiations for its settlement or compromise.

If Delaware promptly notifies the Supplier in writing of a third party claim against Delaware that any Deliverable infringes a copyright or a trade secret of any third party when such claim is known to Delaware, the Supplier will defend such claim at its expense and will pay any costs or damages that may be finally awarded against Delaware. Supplier will not indemnify Delaware, however, if the claim of infringement is caused by (1) Delaware's misuse or modification of the Deliverable; (2) Delaware's failure to use corrections or enhancements made available by the Supplier; (3) Delaware's use of the Deliverable in combination with any product or information not owned or developed by Supplier; (4) Delaware's distribution, marketing or use for the benefit of third parties of the Deliverable or (5) information, direction, specification or materials provided by Client or any infringing, the Supplier shall at its expense and option either (a) procure the right for Delaware to continue using it, (b) replace it with a noninfringing equivalent, (c) modify it to make it noninfringing. The foregoing remedies constitute Delaware's sole and exclusive remedies and Supplier's entire liability with respect to infringement.

L. WAIVERS

Any waiver by either party of any of the provisions of this agreement must be made in writing, and shall not apply to any other provision except when specified in writing. Any waiver shall not restrain the rights of either party under this Solicitation.

M. TAXES

The Supplier shall be responsible for paying all taxes related to or arising out of this Contract. The State is a sovereign and is not responsible for payment of any taxes with the exception of volunteer fire companies.

N. RISK OF LOSS

Risk of loss of electricity supplied under this Contract shall remain with the Supplier until, and risk shall pass to the State upon, delivery of said electricity to the Delivery Point.

O. FORUM, CHOICE OF LAW AND MEDIATION

This agreement shall be governed by and construed in accordance with the laws of the State of Delaware. The Supplier agrees to jurisdiction and forum in Delaware. Nothing in this Solicitation shall displace the applicability of

any federal law or the jurisdiction of the Delaware Public Service Commission (DPSC), the Federal Energy Regulatory Commission, PJM or any other regulatory agency or body.

P. MEASUREMENT

Quantities of electricity shall be measured and billed based on metered volumes in accordance with the tariff of the applicable EDC.

Q. DELIVERY POINT

The "Delivery Point" for such electricity shall be that point on the electric system at which the EDC takes possession of the electricity for final delivery of the electricity to the meter(s) of the specific facilities. This same Delivery Point shall be where the facility takes title to the electricity.

R. NOMINATING AND BALANCING RESPONSIBILITIES

It is the Supplier's responsibility to conduct all required nominations on behalf of the facilities specified herein. The Supplier shall be fully familiar with the imbalance, transmission losses, and line loss policies of the EDC, the interstate/intrastate transmission companies and PJM. Any costs and/or penalties associated with these items will be borne by the Supplier.

S. MATERIAL CHANGE

For large interval metered accounts (defined as accounts with EDC measured peak demands greater than 300 kw), the facility manager will make a reasonable effort to promptly notify the Supplier and AEM in writing via email or facsimile of any construction projects including but not limited to the addition of on-site behind the meter photovoltaic ("PV") solar, Combined Heat & Power (CHP), fuel cells, suspensions of service and additions or maintenance of equipment that may impact a facility's annual historical usage by more than 25% (a "material change"). Each State agency and Aggregation Partner has been asked to identify any potential projects that may significantly impact its future usage volumes. Potential projects and the resulting impact on future usage volumes have been noted by account on the Exhibit 1 account list.

Additionally, a material change cannot be caused by a declared State of Emergency, severe weather event i.e. "Polar Vortex" or Force Majeure events. If the facility notifies Supplier of any material change, Supplier will pay any substantiated penalties imposed by relevant market entities.

T. REGULATORY CHANGE

If any regulatory change(s) is imposed after this Contract has been awarded, the Supplier may pass through to the Customer any reasonable charges that are a result of the regulatory change(s) so long as such charges are directly related to supplying electricity under this Contract. However, these types of potential increases in costs during the term will only be allowed if they apply to all similarly situated suppliers serving load in a particular EDC zone, PJM region, etc. A change in energy market prices is not considered a "regulatory change". The Supplier is required to submit a written notice of such regulatory change accompanied by an explanation of how the change is directly related to supplying electricity to the State. This notice must be provided to the State sixty (60) days prior to the implementation of the regulatory change.

Regulatory Change may be a new charge or an increase in a current charge (i.e. transmission charges) imposed by the relevant Electric Distribution Companies ("EDC"), Federal Energy Regulatory Commission ("FERC"), Pennsylvania-New Jersey-Maryland Interconnection ("PJM"), or PJM's successor. A Regulatory Change may also mean a new element of retail full requirements service imposed through law or regulation by the State of Delaware or the United States. PJM's implementation and transition to Capacity Performance as well as FERC's recent reallocation of TEC settlement charges/credits will not be considered a regulatory change.

Any approved change in NITS, TEC or Capacity rates as applicable shall be applied using each account's then current PLCs at the time the charge or credit is applied. Any regulatory change resulting in a discount or reduction in Supplier's cost to serve shall be passed through to the State on a timely basis.

U. CUSTOMER RELOCATION

If an account served by the Supplier closes, becomes inactive or relocates outside of its current EDC, the State may terminate service for the account without any of the penalties set forth in this Agreement.

V. FORCE MAJEURE

Except for the State's obligation to pay Supplier for Electricity delivered, if either Party is rendered unable, wholly or in part, to perform its obligations under this Agreement due to Force Majeure, to the extent affected by the Force Majeure the obligations of each Party will be suspended for the duration of such Force Majeure. A Party claiming Force Majeure shall promptly notify the other Party by telephone and confirm within a reasonable period of time by a written notice describing in reasonable detail the nature, and estimated duration, of such Force Majeure. The Force Majeure will, so far as possible, be remedied with all reasonable dispatch. If the duration of the Force Majeure event exceeds twenty (20) days, the Party not claiming Force Majeure may terminate the affected portions of this Agreement with ten (10) days written notice to the other Party. Any termination due to Force Majeure will not be subject to an early termination payment. High electric loads on the PJM grid or EDC's system such as were experienced during the "Polar Vortex" in 2014 are not considered Force Majeure.

W. LOAD REDUCTION AND DEMAND RESPONSE

The State will not be penalized in any way for pursuing energy conservation projects, installing on-site PV solar systems, CHP or participating in demand response programs that reduce electrical loads. It is understood that such initiatives would have a positive impact, overall, on efficiency, reducing grid demand, and expanding the use of clean energy sources. It is also expected that such initiatives would only have a limited impact on the energy consumption of the aggregate portfolio of accounts.

X. ENROLLMENT

The Supplier will be responsible for switching accounts from the applicable EDC (or existing third-party supplier) to Supplier and fulfilling any obligations with the EDC to that end. If the Supplier fails to switch accounts within the terms specified in this Contract, penalties based on the difference between the Delmarva Power's Standard Offer Service Rate and Contract award price for the period of time the account remained on EDC service shall be imposed at the sole discretion of the State. The Supplier shall not be responsible for any enrollment delay that is a result of erroneous information provided by the State or to the extent that such enrollment delay results from, or is caused by, the negligence or acts of the EDC or a previous Supplier. The Supplier will be required to provide a spreadsheet clearly identifying each account number being served as a result of Contract award(s) and confirmed enrolled by the EDC and the service start date for each of these accounts. This spreadsheet will be due to the State and AEM within 30-days of contract award for the State's 4 largest accounts and updated again on or before April 30, 2023.

Facilities in leased space that are responsible for paying its own Delmarva Power electricity bills will be allowed to participate in this Contract but there are no private landlords or private owners included as Aggregation Partners. Notes regarding any differences in service end dates for any account, including accounts in leased space, will be clearly noted on Exhibit 1.

Y. CREDIT FOR STANDARD OFFER SERVICE

If at any time (unless under a condition of Force Majeure or by default by the State) an account covered by this Contract is forced to accept Standard Offer Service Rates from the EDC serving in its capacity as the utility Supplier of last resort, the Supplier shall be responsible for payment of any additional electric costs incurred over and above the Contract award price.

Z. PAYMENT AND BILLING

The State shall pay the Supplier through monthly utility bills rendered by the EDC for each account included in this Contract in accordance with the applicable EDC's billing procedures. If estimated usage values are used by the

EDC, the Supplier shall adjust all estimated usage values to actual metered consumption levels no later than one month after actual usage volumes are provided by the EDC.

AA. FAILURE TO PAY

If the State has not paid in full for electricity on the EDC due date then:

A. The State will be obligated to pay the interest that will accrue on any due and unpaid amounts on an EDC invoice from the date the amounts became due at a rate of 1.0% per month, pursuant to 29 Del. C. 6516(d)(4).
B. If any overdue amount continues to be unpaid thirty days following the due date, the Supplier may continue to apply a late payment charge on the overdue amount as provided about and following thirty days written notice and cure to the State (which written notice shall be issued separately from any bill and only after the expiration of such thirty days following the due date), may at its option terminate this agreement as to the accounts so overdue.
C. The State will pay to the Supplier a $25 charge for each returned payment on a Supplier invoice for insufficient funds.

BB. INVOICE DISPUTES

If any account holder under this Agreement, in good faith, disputes some portion of a Supplier's invoice, the State will provide the Supplier within thirty days of the invoice date, a written explanation specifying the amount in dispute and the reason for the dispute. The parties will use good faith efforts to resolve any dispute. If the parties are unable to resolve any such dispute within thirty days of the notice date, either party may begin legal proceedings to resolve the dispute. Upon final resolution or agreement that any disputed amount is owed, such amount shall be deemed due and owing as of its original due date and such amount (together with accrued interest thereon at the rate specified above) shall be paid by the State to the Supplier within ten days of such resolution or agreement. The State shall pay all undisputed amounts within thirty days of receipt of the Supplier invoice or within the EDC's net payment period for an EDC Invoice. The State retains the right to audit all invoices, and Supplier agrees to resolve and reconcile any errors so identified.

CC. ADDING/DELETING ACCOUNTS

For a variety of reasons, it is possible that certain authorized facilities eligible to purchase electricity under this contract will not initially be included in Exhibit 1. In that event, the State shall provide the Supplier with historical usage or an estimate of the facility's electric requirements and the State retains the right to add accounts at the contracted price, under the same Terms and Conditions as this Contract, so long as the aggregate usage of all additional accounts does not exceed 3% of the original total annual volume for all accounts awarded to the Supplier as set forth in Exhibit 1. The 3% allowance is not considered a bandwidth; once the 3% allowance is filled, the Supplier is not obligated to accept any new AC additions at the contract rate. If during the term of the contract the overall annual volumes decline due to weather impacts, closed ACs, etc. then the State would be willing to agree to terms to add additional ACs up to the original quantities plus 3% if the Supplier wants to offer this option.

For all other accounts after the 3% allowance has been exhausted, the State shall provide historical usage or an estimate of the facility's electric requirements and the Supplier will be asked to provide a price for the new account under the same Terms and Conditions as this Contract. The State will provide this information at least thirty (30) days prior to the desired flow date. The Supplier will have fifteen (15) days to provide a price for the new accounts. The State will have the ability to decline the price if it is not in the State's best interest. Adding and deleting facilities shall be accomplished via email or through a bilateral add/delete form agreed to by both parties.

A facility will not be considered an addition even if a new account number is assigned by the EDC if already included in Exhibit 1. If the EDC deems appropriate to change an account number for a facility during the term of this Contract, this will also not be considered an addition.

DD. GOVERNMENT REGULATIONS

This Solicitation and all rights and obligations of the parties hereunder are subject to all applicable federal, State, and local laws and all duly promulgated orders and duly authorized actions of governmental authorities. The Supplier shall obtain and maintain at its expense all permits and licenses necessary to perform the services under this Solicitation.

EE. INDEPENDENT CONTRACTOR AND LICENSE

It is understood that in the performance of the services herein provided for, Supplier shall be, and is, an independent contractor, and is not an agent or employee of the State and shall furnish such services in its own manner and method except as required by this Agreement. Supplier shall be solely responsible for and shall indemnify, defend and save Delaware harmless from all matters relating to the payment of its employees, including compliance with social security, withholding and all other wages, salaries, benefits, taxes, exactions, and regulations of any nature whatsoever.

FF. PUBLIC DISCLOSURE

The Supplier shall not make any press releases about, or in association with, this Contract unless written consent from the State has been obtained.

GG. AFFIRMATIVE ACTION, NON-DISCRIMINATION IN HIRING AND EMPLOYMENT

The Equal Employment Opportunity clause required under Federal Executive Order No. 11246, the affirmative action commitment for veterans, set forth in 41 CFR 60-250.4, the affirmative action clause for handicapped workers, set forth in 41 CFR 650-741.4, and the related regulations of the Secretary of Labor, 41 CFR Chapter 60, shall at all times be complied with by the Supplier to the extent required thereby.

HH. SIGNATORS' AUTHORITY/COUNTERPARTS

The undersigned certify that it is authorized to execute this Solicitation on behalf of its respective organizations. This agreement may be executed in two or more counterparts, each of which shall be an original. It shall not be necessary in making proof of the contents of this Solicitation to produce or account for more than one such counterpart.

II. REPORTING REQUIREMENTS

Monthly Electronic Summary Report: The Suppler shall provide the State and/or AEM with a digital electric consumption summary for usage of all accounts, containing the following information by account number: service start date, service end date, total consumption, and total charges. The summary will be in Microsoft Excel spreadsheet template and accompany or precede payment of monthly fees. The report will be provided timely by the Supplier after requested by the State or AEM and may be as frequent as monthly.

All invoices, reports, documents provided in response to an audit, and any other documentation provided to Delaware pursuant to any contractual obligation, including any chart or compilation of data, report, produced by the Supplier shall contain the following certification:

"I hereby certify that the information reported herein is true, accurate and complete. I understand that these reports are made in support of claims for government funds."

Any certification related to information and documents produced to Delaware shall be certified only by the Supplier.

JJ. SEVERABILITY

If any term or provision of this Agreement is found by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable, the same shall not affect the other terms or provisions hereof or the whole of this

Agreement, but such term or provision shall be deemed modified to the extent necessary in the court's opinion to render such term or provision enforceable, and the rights and obligations of the parties shall be construed and enforced accordingly, preserving to the fullest permissible extent the intent and agreements of the parties herein set forth.

KK. COMPLETE AGREEMENT

This agreement and its Appendices shall constitute the entire agreement between Delaware and the selected Supplier with respect to the subject matter of this Agreement and shall not be modified or changed without the express written consent of the parties. The provisions of this agreement supersede all prior oral and written quotations, communications, agreements and understandings of the parties with respect to the subject matter of this Agreement.

LL. NOTICES

Any and all notices required by the provisions of this Agreement shall be in writing and shall be mailed, certified or registered mail, return receipt requested. All notices shall be sent to the following addresses:

TO DELAWARE:

Megan Garrett, Energy Resource Mgr.
540 South DuPont Highway, Suite 1
Dover DE 19901
Telephone: (302) 739-5644
Fax: (302) 739-6148

TO SUPPLIER:

13. ATTACHMENTS

Attachment A: Acknowledgment Page
Attachment B: Exhibit 1 List of Accounts
Attachment C: Bid Template
Attachment D: Exhibit 2 State of Delaware Memorandum of Agreement for the Aggregation of Energy Procurement
Attachment E: List of MOA Signatories
Attachment F: Summary of Questions and Answers Submitted During the RFP Process

ATTACHMENT A: ACKOWLEDGEMENT PAGE

This form must be submitted by a supplier in order to participate in the final round of bidding.

DIRECTIONS

The supplier must execute and return the signed acknowledgment form by the required date to participate in the final round of executable pricing for the State's electricity requirements. The acknowledgement form will bind a supplier to the following:

1. The terms and conditions contained in this solicitation will govern the purchase of electricity from the supplier.
2. The supplier shall not add, delete or change any term or condition contained in the solicitation as a prerequisite to supplying electricity to the State under a contract awarded as a result of the final round of bidding and contract award.

AMENDMENTS TO SOLICITATION

The supplier must acknowledge receipt of any Amendments to this procurement in the space indicated below, and with the understanding that except to the extent specifically set forth in the Amendments, the remaining terms of the Solicitation will remain the same.

NAME AND SIGNATURE REQUIREMENTS FOR PROPOSALS AND CONTRACTS

The correct legal business name of the Supplier must be used in all contracts. A trade name (i.e., a shortened or different name under which the firm does business) should not be used when the legal name is different. Corporations must have names that comply with the laws of the states and/or federal jurisdictions in which it conducts business.

STATE OF DELAWARE	STATEWIDE CONTRACT FOR COMPETITIVE SUPPLY OF ELECTRICITY ACKNOWLEDGEMENT

Acknowledgment of Electricity Purchase Terms and Conditions of Contract

The undersigned acknowledges and agrees that all of the Terms and Conditions contained in the Terms and Conditions Section of this Solicitation will be applicable to each Contract that is expected to result from a subsequent award. By signing this Acknowledgement, the Supplier hereby agrees that it has fully read and understood all language included and will comply with all requirements and regulations referenced in this Solicitation.

Acknowledgment of Procurement Amendments:

The undersigned acknowledges receipt of the following amendments or addenda to the Solicitation and acknowledges its understanding that except to the extent specifically set forth in these Amendments, the remaining terms of the Solicitation will be the same:

Amendment Number	Date

STATE OF DELAWARE	SUPPLIER NAME:
AUTHORIZED SIGNATURE:	SUPPLIER AUTHORIZED SIGNATURE:
NAME OF AUTHORIZED SIGNER:	NAME OF AUTHORIZED SIGNER:
DATE:	DATE: