



A PHI Company

## **DELMARVA POWER & LIGHT COMPANY REQUEST FOR PROPOSALS INSTRUCTIONS TO BIDDERS**

### **1. GENERAL**

The purpose of this Request for Proposals (RFP) is to solicit proposals for the construction of New Generation Resource(s) (New Generation) within the State of Delaware that may result in Delmarva Power & Light Company (Delmarva or the Company) entering into a Power Purchase Agreement (PPA) to buy electric power (capacity, energy, and ancillary services) to supply a portion of Delmarva's Delaware Standard Offer Service (SOS) customer requirements. Such solicitation is required under the Electric Utility Retail Customer Supply Act of 2006 (the Act). Delmarva, in cooperation with the Delaware Public Service Commission, the Office of Management and Budget, the Controller General and the Delaware Energy Office (the "State Agencies"), pursuant to the Act shall determine whether these proposal(s) meet all threshold requirements. Among those proposals, Delmarva and the Independent Consultant retained by the State Agencies shall perform a detailed evaluation in accordance with the criteria set forth in the RFP. Delmarva will evaluate the highest rated proposal(s) for potential inclusion in Delmarva's Integrated Resource Plan (IRP). Delmarva and the Independent Consultant will submit reports to the State Agencies regarding their recommendations as to whether Delmarva should enter into a PPA with one or more bidders who have submitted proposals in response to the RFP, and the State Agencies, pursuant to the Act, will determine which if any PPA should be approved and executed by Delmarva.

#### **1.1 INTRODUCTION**

Delmarva is seeking proposals for the purchase of electric power subject to the following:

1. The construction of New Generation shall be located in Delaware and be commercially operable no later than June 1, 2013 and not prior to the execution of the PPA. New Generation is defined as any generation resource which adds net generating capacity in the State. If bidders propose to repower an existing facility, Delmarva shall only consider the incremental capacity compared to the megawatts in place before the repowering took place. For example, if a 150 MW facility is repowered,

and replaced with a 200 MW unit, the amount that may be offered to Delmarva under this RFP shall be 50 MW. By contrast, if a bidder retires an existing generating unit, and adds another unit in the same location, the full amount of megawatts (up to [the maximum contract size allowed under this RFP200 MW](#)) shall be considered. Bidders may not retire a unit and propose to bring that unit back on line in order to qualify under this RFP; in that case, only incremental additions would be evaluated.

Technically, New Generation must satisfy the requirements of Manual 14A of the Pennsylvania-New Jersey-Maryland Interconnection ("PJM") power pool and must satisfy, where applicable (e.g. for fossil generators emitting air pollutants) the permitting requirements for a major stationary source as defined in 40 C.F.R. Section 52.21(b)(1)(i) or 40 C.F.R. Section 52.24(f)(4)(i) and/or a modification to an existing source which is a major modification as defined in 40 C.F.R. Section 52.21(b)(2)(i) or 40 C.F.R. Section 52.24(f)(5)(i) and/or the permitting requirements of the Delaware Regulations Governing the Control of Air Pollution.

2. Under a PPA, Delmarva shall purchase up to 400 MW of capacity, energy and ancillary services; [provided, if a proposed baseload capacity project has little or no significant ramping capability, the maximum contract size shall be reduced by multiplying 400 MW by 70% divided by the project's target equivalent availability factor \("EAF"\) \(for example, a project with an 80% target EAF with little or no significant ramping capability would have a maximum contract size of  \$400 \* .70 / .80\$  or 350 MW\)](#). In addition, Delmarva shall purchase ~~up to [TBD] of~~ Renewable Energy Credits ("RECs") ~~[per]~~ from renewable projects:<sup>1</sup> [for the following RPS compliance years: \(a\) 2010—65,000, \(b\) 2011—85,000, \(c\) 2012—105,000, \(d\) 2013—135,000, \(e\) 2014--150,000, and \(f\) after 2014—175,000.](#) Capacity purchased will not exceed the contract capacity under the PPA from the New Generation. Proposals for New Generation capable of delivering capacity and energy in excess of that Capacity sold under the PPA are acceptable where the bidder recognizes that less than 100% of the capacity and associated energy from the New Generation would be purchased by Delmarva.
3. Bidders may offer terms for the PPA for a minimum of 10 years and a maximum of 25 years.
4. Bidders will provide a non-refundable bid fee of \$10,000 at the time that bids are submitted. For projects less than 50 MW in size, the bid fee will

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<sup>1</sup> For purposes of this RFP, a renewable project is a project which is an "eligible energy resource" under the Renewable Energy Portfolio Standards Act of 2005, 26, Del. C. 352. ["Renewable Energy Credits" as used in this RFP, are defined in the Delaware Public Service Commission's Rules and Procedures to Implement the Renewable Energy Portfolio Standard.](#)

be \$200 per MW with a minimum non-refundable bid fee of \$500. A bidder may propose up to three different variants for each bid deposit per proposed generation resource with respect to price or price formulas, contract term, guaranteed completion dates, contract size or other variables.

Delmarva is seeking proposals for a project or combinations of projects providing capacity and energy that are cost-effective, that offer rate stability to SOS customers, and that satisfy other criteria specified in this RFP. This RFP describes Delmarva's request and provides information and instructions to prospective bidders.

## **1.2 GENERATION TECHNOLOGY AND TYPE**

As specified in the Act, Delmarva will favor projects that offer cost-effective alternatives for price stability, long-term environmental benefits to the State, fuel diversity, improved reliability in Delaware, and utilize new or innovative baseload technology, brownfield or industrial sites, and an existing fuel and transmission infrastructure, among other factors. Commercial operation dates prior to June 1, 2013 will be viewed more favorably.

## **1.3 LICENSES, PERMITS AND APPROVALS**

Projects contracted under this RFP must receive all applicable local, state and federal licenses, permits, and approvals prior to commencing operation and sales to Delmarva. Under the PPA, many of these approvals will be required at interim stages of project development to provide assurance of project viability and desirability. It is the responsibility of the project developer to obtain all such approvals.

## **1.4 LOCATION**

This solicitation is open to New Generation projects proposing to be located in the State of Delaware, either inside or outside Delmarva's service territory. For New Generation in or on Delaware's jurisdictional portion of the Delaware Bay or the Atlantic Ocean, whether the waters of the State of Delaware or the Waters of the United States or within its Exclusive Economic Zone from 12 to 200 Nautical Miles, "in Delaware" shall mean that the New Generation's power cables make landfall within the State of Delaware and originate in Delaware and/or Federal waters only.

## **1.5 PRODUCTS PURCHASED**

The bidder will be contractually committed to deliver energy, capacity and ancillary services (and, if applicable, RECs) under the PPA, and to develop and construct the New Generation proposed.

Delmarva is interested in obtaining incremental UCAP (as defined in PJM's Reliability Assurance Agreement or any successor agreement) in its purchases

from the facility that would allow Delmarva to receive credit for the UCAP delivered to PJM. For wind and other intermittent renewable energy projects, Delmarva will contract to pay winning bidders only for the amount of capacity from the facility for which PJM will give Delmarva capacity credit. For other projects, Delmarva will pay the lesser of the contracted capacity and the amount of summer net capability determined under PJM rules ([multiplied by Delmarva's entitlement](#)), as adjusted based on the availability of the Project. The availability adjustment mechanism will be like UCAP in that it will take into consideration a project's equivalent forced outage rate but will be structured to provide a stronger incentive for Sellers to perform at higher levels during seasonal peak periods. The delivery point of capacity is the Delaware portion of the Delmarva Zone.

The delivery point for energy is required to be in the Delaware portion of the Delmarva Zone. Delmarva shall not be responsible for designating proposed projects as a network resource. Projects having near-term commencement dates will be viewed more favorably.

"Energy" means three-phase, 60-cycle alternating current electric energy, expressed in units of kilowatt-hours or megawatt-hours.

The [bidder shall specify the "Delivery Point" for energy, which shall be either \(a\) the Delmarva Zone or \(b\) the Interconnection Point](#). The Interconnection Point will be the PJM bus to which the generator is electrically connected, or the closest location thereto monitored for Locational Marginal Price by PJM. [Delmarva prefers that the Delivery Point be the Delmarva Zone. If a bidder specifies the Interconnection Point as the Delivery Point, expected congestion and marginal losses \(positive and negative\) and the price risks associated with congestion and marginal losses will be taken into consideration in the economic analysis. If a bidder chooses the Interconnection Point as the Delivery Point for energy, and congestion and marginal losses are critical to the outcome of the RFP, Delmarva will provide the bidder with the option of proposing further transmission reinforcements at its expense or the retiring of older units to mitigate the congestion and losses, but only if there is adequate time in the evaluation process to accommodate the bidder.](#)

The Interconnection Point must be in the Delaware portion of the Delmarva Zone. "Delmarva Zone" means that aggregate of busses as listed on the PJM website and aggregated by Delmarva.

## **1.6 BIDDER SELECTION**

After the proposal evaluation, Delmarva and the Independent Consultant (New Energy Opportunities, Inc) reserve the right to recommend to the State Agencies that one or more of the proposals, for -any fraction of the 400 MW being solicited, or projects totaling more than 400 MW, be approved by the State Agencies. Delmarva with the approval of the State Agencies may also reject any and all proposals or waive any formality or technicality in its treatment of proposals

received. A bidder who submits a proposal does so without recourse against Delmarva and New Energy Opportunities, Inc. and its subcontractors for either rejection by Delmarva or the State Agencies or failure of Delmarva to execute an agreement with such a bidder for the purchase of electric power for any reason. The evaluation process is described in Section 2 below.

### **1.7 SUBMISSION OF PROPOSALS**

Proposals must be finalized [and delivered in accordance with Section 6.1 by 5:00 pm on](#) December 22, 2006 and submitted to the web site described in Section 6.3. [The bound copy delivered will be the official copy in the event of discrepancies with the web site submittal.](#) However, proposals may be submitted at any time before that date, and bidders are encouraged to do so. As part of their proposals, bidders are required to provide all the information requested in the Bidder Response Forms, Forms B through [SR](#), provided as Attachment 2. The Notice of Intent form, Form A, is due by November 22, 2006.

If a proposal is submitted by December 8, 2006, Delmarva will complete the Non-Responsiveness Test described below and notify the bidder of any deficiencies, providing an opportunity for the bidder to correct such deficiencies by December 22, 2006. When Delmarva has completed the Non-Responsiveness and Threshold Tests, bidders will be notified that their proposals shall be considered final and will automatically move to the Detailed Evaluation phase. A detailed schedule of the RFP process is provided in Section 5 below. All proposal documents become the sole property of Delmarva once submitted, with the exception of any proprietary material so marked.

### **1.8 REGULATORY APPROVAL CLAUSE**

Delmarva has included a "regulatory approval" clause as a condition precedent in its model PPA that permits either party to terminate the contract in the event that the State Agencies or any other regulatory agency which claims jurisdiction over the contract either does not approve the contract in a timely manner, or modifies the contract to impose additional conditions that are unacceptable to the affected party.

### **1.9 RFP ADMINISTRATION**

Section 6 describes the administration of the RFP, including:

- Receipt of proposals
- Communications
- Documentation
- Disqualification
- Approval
- Non-Discrimination

## **2. PROPOSAL EVALUATION**

## 2.1 ~~2.1~~—INTRODUCTION AND OVERVIEW

Both the price and non-price factors associated with all proposals received will be evaluated by Delmarva with assistance from ICF International (the Consultant). The Independent Consultant will also conduct an evaluation, which will consist of performing an independent evaluation of certain aspects of the proposals and reviewing Delmarva's evaluation of other aspects of the proposals. An affiliate of Delmarva may submit proposals, which will be evaluated under the same evaluation process as all other proposals, as identified in this RFP, and shall not receive any favorable treatment. Should an affiliate of Delmarva provide a notice of intent to submit a proposal, Delmarva will follow the procedures identified in Section 2.6. Delmarva itself may not submit a proposal pursuant to this RFP. The RFP development, evaluation criteria development, and evaluation processes are designed to ensure a fair, unbiased review of all proposals.

## 2.2 PROPOSAL EVALUATION PROCESS

The proposal evaluation process will result in evaluation reports to be provided by Delmarva and the Independent Consultant to the State Agencies, which reports will contain the recommendations of Delmarva and the Independent Consultant. As part of this process, Delmarva will evaluate high ranking proposals in the context of the Company's IRP, which is to be filed with the Commission on or before December 1, 2006. The IRP process will evaluate available supply and demand-side options during a ten (10)-year planning period in order to provide efficient and reliable resources required over time to meet its customers' needs at a minimal reasonable cost. The IRP will be amended after its filing date with the results from the RFP. Delmarva will make available to the State Agencies in a timely fashion both its evaluation of the proposals in response to the RFP and its evaluation of their fit in the context of the IRP. To the extent there are outstanding issues not previously resolved as part of the detailed evaluation process, Delmarva will negotiate with high ranking bidder(s) in an effort to resolve or at least refine outstanding issues to finalize a PPA.

The proposal evaluation process will be comprised of several four steps. The first two steps are: the Non-Responsiveness Test and the Threshold Test. Only proposals which pass these two tests will proceed to the next steps. The third step will be a detailed Price and Non-Price evaluation (the Detailed Evaluation) of all remaining proposals. Then, Delmarva will review prioritized bids in its IRP and amend the review with such review. FinallyAs the fourth step, Delmarva and the Independent Consultant will provide evaluation reports containing their recommendations to the State Agencies. These agencies are expected to make their decision by February 28, 2007. If the State Agencies approve a proposal, Delmarva will receive authority and direction to negotiate any remaining issues and sign a PPA with that bidder(s).

The purpose of each step that Delmarva will carry out and the process employed in each step are described in the following sections.

#### 2.2.1 Non-Responsiveness Test

This first review of all the proposals received will ensure that bidders have provided all the information in the proper fashion to allow an equitable evaluation and to check that all information requirements have been met. Bidders submitting proposals by December 8, 2006 that are deemed non-responsive by Delmarva will be informed of such deficiency(ies) in time to revise their proposal by the December 22, 2006 deadline, as described in Section 5. Proposals submitted after December 8, 2006 that are determined to be non-responsive may be rejected. For example, proposals may be deemed non-responsive if they have not provided all information in the Bidder Response Forms (Attachment 2), among other possible deficiencies. If information requested is not available at this time, bidders should indicate that in their response and should also state when or if the requested information would become available. Delmarva reserves the right to request bidders to respond to clarifying questions or information requests regarding their proposals. Bidders will be given a fixed number of days (3 business days unless otherwise specified) to respond to such requests. Failure to respond within the prescribed time requirements will mean the bid is non-responsive and would not be eligible for the detailed evaluation.

#### 2.2.2 Threshold Requirements Test

Every proposal received will be examined to determine if the proposal fulfills the Threshold Requirements below. Each proposal must meet the Threshold Requirements to be eligible for Detailed Evaluation. Failure to meet any Threshold Requirement will result in the proposal being eliminated from further consideration. In addition, bidders are required to provide additional information in these and other areas in the Bidder Response Forms, Attachment 2.

There are a number of Threshold Requirements, including:

- Filing - Each Bidder must submit the required Notice of Intent by 5 PM prevailing Eastern time, November 22, 2006.
- Credit- Bidders are required to meet the Credit threshold as listed below. Bidders can meet the credit threshold in one of two ways. Under the first option, bidders must meet the three conditions listed as follows:
  - 1) Each bidder must demonstrate that it has sufficient financial wherewithal to finance the project(s) being proposed. This may include evidence of the

bidder's credit rating, short-term debt rating, total net worth, financial statements, liquidity and financial stability. Bidders must identify any prior project or corporate defaults, under the present or prior company names.

- 2) The net worth of the bidder must be at least as large as the total capital that will be required for this project.
- 3) Bidders and/or guarantor must have an investment-grade rating for senior unsecured debt from Standard & Poors, Moody's or Fitch Ratings (other rating agencies shall not be accepted). If there are differences, the rating used shall be the lowest of those assigned by one of these rating agencies. In the case where the bidder is not currently rated by Standard & Poors, Moody's or Fitch and a guarantor having an investment-grade rating is not provided, bidder must demonstrate to the satisfaction of Delmarva that they have the financial standing equivalent to an investment grade rating.

Under the second option, the bidder must demonstrate that it can meet the following two conditions:

- 1) The bidder must provide a reasonable showing of its ability to finance its proposed project based on past experience and a sound financial plan identifying the proposed sources for debt and equity, and a letter from a financial institution indicating the project is financeable. Bidders must also provide a financial pro forma for its project.
- 2) The bidder must demonstrate its ability (and/or that of its credit support provider) to provide the required security, including its plan for doing so (indicating type of security the bidder proposes, sources of security, and a description and financial statement of its credit support provider, if applicable).

Accounting- Delmarva, ~~related to non-affiliated third-party bids~~, is unwilling to be subject to accounting and tax treatment that results from Variable Interest Entity treatment as set forth in Financial Accounting Standards Board (FASB)

Interpretation No. 46 (revised December 2003) as issued and amended from time to time by FASB.

All bidder proposals will be assessed for appropriate accounting and/or tax treatment. Bidders shall supply Delmarva with all the information necessary to make such assessments. Such information may include, but is not limited to, data supporting the economic life, the fair market value, executory costs, non-executory costs, and investment tax credits or other costs (including debt specific to the asset being proposed) associated with the bidder's proposal. Bidders are required to demonstrate that consolidation under FIN No. 46 will not occur under any proposal made in response to this RFP, and Bidders shall provide supporting information sufficient to enable Delmarva to independently verify such conclusion (see Form O). If Delmarva determines that a proposal would trigger consolidation on its books under FIN No. 46, it will provide a written justification to the Independent Consultant and the State Agencies so such a determination may be adequately reviewed. As part of the review process, Delmarva, the State Agencies and the bidder shall explore whether the structure of the proposed generation entity or power purchase agreement can be modified to prevent consolidation under FIN 46 on DP&L's books as an alternative to disqualification.~~should provide all the information requested in Form O as well as any other information or documentation which the bidders deems relevant to demonstrate that the proposal will not trigger consolidation resulting from Variable Interest Entity treatment. [Delmarva should provide some guidance as to standards it plans to use in making assessments on Variable Interest Entity treatment]~~

Siting-

The bidder shall demonstrate that it has identified a site for its proposed project, and, if not owned by the bidder at time of Proposal submittal, shall demonstrate its ability to acquire or secure use of the site by holding a purchase option or a binding letter of intent from the site owner(s). For an offshore wind energy project, the bidder must (a) provide evidence of written requests from the bidder to the appropriate federal and state agencies to begin permitting and licensing the specific offshore site(s) for which the proposal is being made and (b) demonstrate the feasibility of securing necessary federal and state permits and licenses.

- Environmental- The bidder shall identify all required permits, provide a reasonable schedule for acquisition of all necessary permits and provide a reasonable demonstration of its ability to comply with all applicable environmental laws and regulations. In addition, the bidder shall provide a complete development and construction schedule for the proposed project.
- Engineering- The bidder shall provide a preliminary engineering study that includes: (1) general arrangement and plot plan showing evidence of the current zoning classification of the site and any necessary rights-of-way, size, fuel supply route, fuel storage, cooling source, waste disposal, interconnection point, etc.; (2) specific type of generation technology to be used; and (3) associated emission control equipment required to satisfy environmental regulations.
- Contract- The bidder agrees with the [provisions of the](#) Term Sheet provided as Attachment 1 to this RFP [under the headings of “Project,” “Services Term,” “Development Period Security,” “Construction Schedule,” “Guaranteed Initial Delivery Date and Delay Damages,” “Operating Procedures,” “Electric Interconnection and Transmission Service,” “Fuel Interconnection,” “Fuel Supply and Transportation,” “Maintenance Obligations,” “Credit Requirements \(as of the Initial Delivery Date,” and “Lien on Project” \(collectively, the “Non-Negotiable Terms”\); ~~which identifies key contractual terms and conditions.~~ Bidders submitting a Notice of Intent shall receive access to a Power Purchase Agreement for review at least one month before bids are due. Bidders may suggest changes to PPA provisions. However, if proposed changes are made that \[are inconsistent with the Non-Negotiable Terms in on the whole change the fundamental risk allocation set forth in\]\(#\) the term sheet and such changes are not subsequently withdrawn at the request of Delmarva, the proposal will be subject to disqualification. ~~;~~ \[If proposed changes are made to provisions of the PPA that incorporate other provisions of the Term Sheet or are not addressed in the Term Sheet, the changes will be reviewed in the context of the bid evaluation process and may be the subject of negotiations.\]\(#\)](#)
- Security- The bidder must agree to post security/collateral, as described in Section 3.4 below and in the PPA. Further,

Delmarva will not accept proposals that require Delmarva to post margin on behalf of the project.

### 2.2.3 Detailed Evaluation

The Detailed Evaluation may lead to the selection of a proposed project(s) that may result in the final negotiation of a power purchase agreement(s). Bidders that provide proposals under consideration in the Detailed Evaluation may be contacted if Delmarva has requests for information. During the Detailed Evaluation both price and non-price factors will be considered simultaneously and weighted at **60% and 40%**, respectively. Non-price factors fall into two groupings with the non-price weighting divided equally between the groupings: those pertinent to favorable project characteristics (20%) and those pertaining to project viability (20%). Bids will be evaluated both with respect to overall score and as to their score in the three major evaluation areas (or super categories)— price/economic, project characteristics, and project viability. Following the Detailed Evaluation, Delmarva may negotiate with the remaining bidders to obtain better terms and mutually advantageous changes to proposals. These negotiations and a bidder's flexibility in negotiating will influence the selection of “winners”.

The price factors, the non-price factors and the relative weighting between price and non-price factors to be used in the Detailed Evaluation are provided in sections 2.3 and 2.4 below.

## 2.3 **PRICE FACTOR EVALUATION [60 Points out of 100 Possible]**

All proposals will be evaluated on price and operational performance factors in the Price Evaluation through simulation of the impact of the proposal on the costs paid by Delmarva’s SOS customers.

Delmarva will consider the following components of SOS cost:

- PPA Capacity Price
- PPA Energy Price
- Residual SOS Cost Impact
- T&D Project Impact
- Transmission Losses
- Imputed Debt Offset
- Costs to comply with the Delaware Renewable Portfolio Standard

All proposals will be evaluated for their effect on total Delmarva SOS costs, both through changes in the market prices and the provision of energy and capacity. Further, the evaluation will consider the expected cost and variation in the expected costs. Delmarva will provide ~~338~~ points for the lowest expected price and will provide ~~2015~~ points for the project(s) that provide the most stable prices, as captured in the uncertainty component of the PPA Energy Price and Residual SOS

Cost. [~~Delmarva should provide some description regarding the proposed approach for calculating price stability in the RFP document.~~] These items measure the extent to which Delmarva's SOS customers are at risk for price fluctuation, and Delmarva shall rank proposals according to the magnitude of this risk. Among other possible measures, Delmarva ~~may expect to~~ use the levelized cost per kWh (or levelized cost relative to the projected market price) and the dollar magnitude of risk for Delmarva SOS customers.

In addition, ~~six~~ five points will be assigned based on the level of exposure that would result for Delmarva and its SOS customers based on the proposed contract size and other factors (see Section 2.38).

The remaining ~~one~~ two price points will be allocated to the project(s) that best conforms to the Contract Terms criterion.

In short, out of the 60 points to be awarded in the price evaluation:

- ~~33~~ 38 points will be awarded to the project with the lowest expected price
- ~~20~~ 15 points will be awarded to the project with the most stable price
- ~~6~~ 5 points will be awarded to the project(s) that provide the desired degree of exposure to Delmarva's SOS customers based on contract size and other factors
- ~~1~~ 2 points will be awarded to projects with the most favorable contract terms

### 2.3.1 PPA Capacity Price

Bidders shall have two options for submitting the capacity price component of their bid. First, the bidder shall have the option to provide Delmarva with a levelized Capacity price in dollars per kilowatt month (\$/kW-month) for the entire term of the contract. Second, bidders shall have the option to bid a combination of fixed levelized capacity prices and indexed prices. A bidder may bid a portion of the capacity price to recover fixed operations and maintenance costs. The bidder could bid a base price for this capacity component that would escalate in accordance with a commonly used index for general inflation ~~or for labor costs~~. In addition, a bidder could bid a portion of the capacity price that would be indexed to a steel price index (steel is a major cost component of power plants), but for only up to fifteen percent (15%) of its initial proposed capacity charges and for only such period of time until the bidder signs a firm agreement on pricing for major capital equipment not to exceed two years at which time, the capacity price would be fixed for the remainder of the contract term; provided, the bidder must provide Delmarva with a not-to-exceed price for this portion of its proposed capacity charge. This pricing mechanism would allow a bidder to share some capital cost price risk until the time when a construction contract would be executed. Use of

any particular index shall be subject to the approval of Delmarva and the Independent Consultant.

Capacity may be provided only from the bidder's project(s), and must be reliable as determined by whether it would qualify for UCAP (upon being constructed) in PJM at the time the PPA is signed. Capacity Price reflects payments Delmarva would make to the project owner for having the generating capacity available to provide electricity to Delmarva, regardless of the number of operating hours or the level at which the project is dispatched. As Delmarva is a summer peaking utility, Capacity Prices must be based on a net summer capacity basis. With the exception of wind projects and other intermittent renewable energy projects (hydro and solar), all projects bid will be evaluated at the target equivalent availability factor specified by the bidder, unless in Delmarva's and the Independent Consultant's judgment, the target availability specified is unreasonably higher or lower ~~for than~~ the proposed generation technology or facility design. Intermittent renewable energy projects will be evaluated based on their projected capacity factor specified by the bidder, unless in Delmarva's and the Independent Consultant's judgment the targeted capacity factor is unreasonably high or low.

### 2.3.2 PPA Energy Price

Bidders shall be paid for energy based on the price offered in cents per kWh (or \$ per MWh). The Energy Price may consist of one or more components. The components ~~may~~ consist of a starting price plus an escalator (see Section 3.1), or other means of demonstrating the energy price that Delmarva will pay for energy on an hourly or other basis. Any escalators or indices selected must be known and measurable. Bidders should contact Delmarva if the bidder is not certain whether a proposed index is allowable or if the bidder wants to recommend a specific index. Delmarva will review such request and inform all bidders whether the proposed index is an allowable index. This process will also apply to any indices that might be applicable to the capacity price.

As with the capacity price, this price shall be discounted back to the present to develop a common basis for comparison between project(s). For proposals that depend – in whole or in part - on the PJM market price for power, Delmarva shall calculate the relevant future prices and assign them to the project(s).

The amount of energy to be purchased by Delmarva will not exceed the amount that the New Generation facility could generate at its full nameplate rating or its contract capacity400MW, whichever is less.

### 2.3.3 Residual SOS Cost Impact

This is the impact (positive or negative, expense or savings) that each proposal is projected to make on Delmarva's total system SOS costs. This factor will take into consideration the cost of other sources of power that Delmarva will use to satisfy the needs of SOS customers once the proposed project(s) comes on line.

The Residual SOS Cost Impact will be estimated using computer models to simulate Delmarva's system with both existing and new generating units. Proposed projects will be modeled individually and potentially in combination to determine which proposals offer the greatest cost savings. The Bidder Response Forms in Attachment 2 require the bidder to provide information that will support this analysis. Supply additions in excess of the contracted quantity will be evaluated in this analysis.

The Residual SOS Cost Impact will be determined by combining a project's impact under a base scenario with high and low price scenarios to determine the effects of prices that are higher and lower than those anticipated. ~~[Note: Delmarva should provide further explanation as to how the low and high price scenarios will be factored into the evaluation.]~~ Also, Delmarva will take price variability into account in the Detailed Evaluation. ~~[Note: Delmarva should provide further explanation].~~

### 2.3.4 T&D Project Impact

T&D Project Impact represents the savings or expense a project causes Delmarva to incur by allowing Delmarva to defer or causing Delmarva to advance planned capital improvement expenditures to its transmission and distribution system. The T&D impact will provide a quantitative measure of the impact on system reliability and overall planning implications. The cost of any incremental network transmission cost or savings will be added to the cost of the proposal for purposes of Price Evaluation. This analysis will also assess the benefit or cost of other transmission projects that would be deferred or accelerated as a result of the proposed project(s).

Based on information submitted by November 22, 2006, Delmarva will prepare a preliminary evaluation of the impact of the project on the need for network transmission upgrades. Delmarva will analyze the impact of the generation project using PJM long-term planning load flow cases. To support this analysis, bidders are required to provide certain transmission-related information, including the interconnection point and the transmission voltage level at which they intend to interconnect to the network. Bidders shall provide this information with their Notice of Intent.

Delmarva will assume that bidders will include the cost of direct interconnection at an appropriate substation in their proposals, but unless otherwise indicated, will assume that the cost of network upgrades has not been included.

The evaluation of transmission impacts by Delmarva will be preliminary and used for bid evaluation only. Bidders will be required to submit an application to PJM for feasibility and impact studies and follow the PJM queuing process to determine overall system impact. Costs for electrical interconnection and upgrades are the bidder's responsibility.

### 2.3.5 Transmission Savings or Losses

This price factor will measure the value of energy saved or lost by virtue of the project operating and reducing Delmarva's overall transmission system energy losses. Delmarva will calculate these savings or losses for every project relative to a reference case utilizing a computer model(s).

### 2.3.6 Imputed Debt Offset

Debt rating agencies generally view long-term PPAs as debt-like in nature. Typically, a rating agency will factor a percentage of the net present value ("NPV") of a PPA's capacity payments as debt in their quantitative assessment of a utility's credit quality. Each bid will be evaluated and ~~a~~ costs will be assigned to account for the incremental equity required to return Delmarva's capital structure to the ratios that would be in place excluding a PPA being imputed as debt by the rating agencies.

Delmarva proposes to calculate an imputed debt offset based on the methodology described above. The imputed debt offset, however, will be used for sensitivity purposes only once all the bids have been evaluated in the Detailed Evaluation Stage. The imputed debt offset will therefore be used to determine the impacts on the ranking of bids based on the magnitude of this adjustment.

Delmarva will assess the incremental equity amount to be equal to ~~at a minimum,~~ 30% of the NPV of the bid's capacity payment (a percentage of the energy price may be included if Delmarva concludes ~~and the Independent Consultant concurs,~~ that a portion of the bid's energy component would likely be imputed as debt by the rating agencies in their assessment of Delmarva's credit worthiness).

Delmarva has included a spreadsheet which describes the Company's methodology for calculating the imputed debt offset as Form S of the Bidder Response Forms.

### 2.3.7 Price Stability

~~[Delmarva should provide an explanation as to how it will conduct its proposed analysis of price stability of proposals]~~ Using scenario-based analysis, the price stability attributes of a proposal will be evaluated by determining the variance in prices to customers associated with a bid in relationship to the option of procurement of power from the market. The results of this analysis will be converted to point scores. Delmarva and its consultant, ICF, will be working with the State Agencies and their Independent Consultant to develop the framework, scenarios and assumptions for this analysis.

### 2.3.8 Exposure Based on Contract Size and Other Factors

Large contract sizes, especially with respect to baseload projects with little or limited ramping flexibility or dispatchability, create higher levels of exposure to Delmarva and its customers than are optimal. The same is true for bidders that do not have investment grade ratings or do not have a parent company that has an investment grade rating. Contract terms of longer durations (e.g., 25 years) create more exposure than contract terms of shorter durations (e.g., 10 years). Bids that create the least exposure, as determined by Delmarva and the Independent Consultant, will ~~ers proposing a contract size of 200 MW or less will~~ receive the maximum points in this category, while bids that create the most exposure. ~~Bidders proposing the maximum contract size with a high capacity factor and little or limited dispatchability~~ will receive the minimum number of points.

### 2.3.9 Contract Terms

The attached Term Sheet (Attachment 2) provides the key contractual terms that will be incorporated into the standard PPA governing the sale of energy and capacity and other Products to Delmarva. Potential bidders shall receive access to the full PPA once they timely register for the pre-bid conference to be held on November 15, 2006. If the bidder would like any changes to the PPA, they shall submit a redlined version by the due date for proposals, in MS Word, showing such requested changes. Delmarva and the Independent Consultant will consider the reasonableness and impact of the requested changes as part of the bid evaluation process, and will favor those bids with the changes that are the least problematic from the perspective of the Company and SOS ratepayers.

## 2.4 NON-PRICE FACTOR EVALUATION [40 Points out of 100 Possible]

Delmarva and the Independent Consultant will also use non-price factors to evaluate the development and operational benefits and risks of each proposed project. The points available for each of the non-price factors are shown below.

2.4.1 Non-Price Factor Evaluation Criteria and Weightings

|                                           | <b><u>Points</u></b> |
|-------------------------------------------|----------------------|
| <b>Project Characteristics</b>            |                      |
| A. Environmental Impact                   | 14                   |
| B. Fuel Diversity                         | 3                    |
| C. Technology Innovation                  | 3                    |
| <b>Project Viability</b>                  |                      |
| D. Operation Date and its Certainty       | 3                    |
| E. Reliability of Technology              | 2                    |
| F. Site Development                       | 5                    |
| G. Bidder Experience, Safety and Staffing | 5                    |
| H. Project Financeability                 | 5                    |
| <b>Total Non-Price Points</b>             | <b>40</b>            |

## 2.4.2 Non-Price Factors

This section describes the factors that will be taken into account in assigning points in the Detailed Evaluation for non-price factors. Except as noted, bidders shall use the response forms provided with this RFP to provide this information, and may submit supplemental information as required. Delmarva and the Independent Consultant will evaluate proposals with more or some of these features more favorably than those that have fewer or none of them.

### A. Environmental Impact **[14 points]**

The environmental impact of the new power generation resource will be scored based on each project's impact on:

- (a) greenhouse gas emissions;
- (b) mercury and EPA criteria pollutants such as NO<sub>x</sub>, SO<sub>2</sub>, and particulate matter and [the formation of ozone](#)
- (c) water including water usage, consumptive use, and discharge [water quality and quantity, impacts on fisheries resources and thermal effects](#);
- (d) land usage;
- (e) wildlife and [fisheries resources](#); and
- (f) solid and hazardous waste [generation and disposal](#).

The 14 points available for this factor will be divided as follows: four points will be available for each of (a) and (b), and 1.5 points will be available for each of (c), (d), (e), and (f).

Each of these criteria will be scored on the basis of low/no impact, medium impact, and high impact. For example, a wind project has no greenhouse gas emissions and will receive the highest available score (4 points) for that criterion. To the extent practicable, Delmarva and the Independent Consultant will work to develop specific quantifiable standards for application in this category.

In assigning points, the impact per MWh expected to be generated will be the standard of comparison. ~~Further, indirect benefits to Delaware resulting from each proposed facility will be taken into account in making this assessment. For example, if the building of a facility will be accompanied by a commitment to operate another facility with high emissions less frequently than current levels, the resulting committed environmental benefits will be factored into the scoring. Similarly, Ancillary impacts, such as land use impacts that may be associated with building a new transmission~~

line, will also be considered in scoring the Environmental Impact criteria.

B. Fuel Diversity **[3 points]**

Delmarva and the State Agencies prefer facilities using fuel that adds diversity and reduces ~~the volatility of the power supply mix~~. Accordingly, ~~Delmarva prefers~~ projects providing energy and capacity from renewable sources and facilities that use solid fuel are preferred. In assigning points for this factor, consideration will also be given to projects that can use diverse fuels or fuels from several sources. This factor is also incorporated into the price evaluation with regard to the stability of pricing that such projects may provide.

C. Technology Innovation **[3 points]**

As required under the Act, Delmarva will provide a preference for projects using innovative technology (e.g., coal gasification and offshore wind).

D. Operation Date and its Certainty **[3 points]**

Nearer-term in-service dates will be favored. One point will be awarded for each full calendar year before 2013 that the project can reasonably be expected to be in-service. For example, if a facility can reasonably be expected to be in-service by June 1, 2011~~December 31, 2010~~, it will receive two points.

Each proposal will be judged as to the reasonableness of its project plan in terms of meeting its proposed commercial operation date. Although certain categories contained in this criterion are also addressed in other criteria (e.g., environmental permitting), this criterion is limited to timing issues and possible concerns about in-service dates.

E. Reliability of Technology **[2 points]**

Projects will be judged on the technical maturity of the generating technology specified. Points will be awarded on the basis of the technology demonstrating the ability to meet availability requirements during commercial operation. Maximum points will be awarded to those technologies which have achieved the target

availability specified by the bidder over at least three consecutive years of commercial operation in the same configuration utilizing the same vendor's major components as those contained in the bid. Minimum points will be awarded to those technologies that have never been placed in commercial operation.

Bids will also be favored based on the relative degree of complexity of the generation technology proposed. Technologies requiring the least degree of system complexity (i.e., fuel handling systems, waste disposal systems, etc.) will score higher than those with higher degrees of complexity. For example, gas-fired combined cycle plants would score higher than coal-fired steam plants with respect to this criterion. Manufacturer's performance guarantees will be considered as part of this evaluation.

F. Site Development

[5 points]

This factor shall include a number of items with regard to the provision of a siting plan and socioeconomic factors, as follows:

(1) Siting Plan

The bidder will identify its site acquisition, permitting and development plans, including those plans for all associated fuel, water or transmission infrastructure. This shall identify the local, State or Federal entities from which approvals must be obtained and the bidders' plan for doing so. This plan shall include but not be limited to these items:

- Identify the site where the project will be located. Indicate the total acreage of the site. Provide a map showing the location of key facilities. Show anticipated placement of all project facilities. Include a map that indicates the location of the transmission line with which the project will be interconnected.
- Provide a list of leases, easements, and/or other ownership documents that demonstrate that the bidder has control of the intended project properties and has the legal right to construct, interconnect, operate and maintain the project described. For an offshore wind project, provide a description of what is required to obtain site control, the status of bidder's efforts to obtain site control, and applicable supporting documentation.
- Provide a description of its proximity to inhabited structures, and its proximity to areas that may be sensitive from an environmental, cultural, security and other perspective.
- If not covered in the first bullet above, provide a written description of all material applications, permits and approvals required to construct and operate the generating facility and all associated interconnecting utilities.
- Describe the bidder's plan for the acquisition and delivery of fuel(s) to the project site(s), and for the interconnection of the project to the grid
- Indicate whether the site is located in an existing brownfield or industrial location.

(2) Socioeconomic Issues

The bidder shall identify the extent to which the project(s):

- Does not raise environmental equity issues
- Minimizes impacts on transportation systems and traffic
- Enhances economic and community development
- Has minimal aesthetic and noise impacts
- Minimizes impacts on historic and archaeological resources

G. Bidder Experience, Safety and Staffing Plan **[5 points]**

Delmarva desires bidders with demonstrated project management and financial capabilities. In its evaluation process, Delmarva will consider the qualifications and experience of key management personnel of the bidder's firm as well as the overall qualifications and experience of the bidder related to functions such as construction, operations, fuel management, regulatory relations, finance and risk management. This information is not part of the response forms, and bidders shall provide this separately in their proposals.

- Please provide a description of relevant experience and a list of previous successful power projects for which the bidder has been responsible. This shall include the bidder's track record in bringing projects to fruition on time or in advance of the required dates.
- Safety is of real importance to Delmarva. The bidder shall provide its track record for safe operation on previous projects, and its plan for ensuring that operations at the proposed site(s) will be safe.
- Provide a list of the names, biographies and responsibilities, relevant experience and professional references for each member of the development team that will be responsible for the following areas: plant management, engineering/construction, safety, financial, environmental, fuel acquisition and operations. This requirement holds true for near-term projects in particular. If such personnel have not been identified due to the projected date of operations (e.g., for a plant scheduled to come on line in 2013), the bidder shall provide evidence that it has a pool of talent with experience such that they will be able to ably carry out each of these functions.

H. Project Financeability [5 points]

Bidders will be judged on their plan and ability to finance the project. Points will be awarded based on the strength of the bidders' financial plan and capabilities.

All bidders must submit a cash-flow spreadsheet showing that their proposal is likely to produce a project that has a commercially reasonable financial profile.

For project financing, this will include a plan as to how the project will meet commercial requirements to be financed and a demonstration that the project can meet those requirements. Any commitments or other evidence of support from financial institutions will be considered in scoring this factor. The bidders should address the proposed funding source(s) or guarantor(s) during project development, construction, and long-term financing.

For corporate financing, the bidders shall demonstrate their financial strength (e.g., financial statements, corporate ratings, etc.), and evidence of relationships with financial institutions that would provide sufficient capital at each stage of project development.

As outlined below, bidders will also be required to provide certain amounts of security, both before and after the in-service date of the proposed Capacity, to mitigate the impact of potential default or withdrawal. These costs should be reflected in all financial analyses submitted.

## 2.5 POINT ASSIGNMENT

During the Detailed Evaluation, Delmarva [and the Independent Consultant](#) plans to evaluate proposals utilizing both the price and non-price criteria outlined in Sections 2.3 and 2.4. Proposals will be evaluated under each criterion and the dollar or point value of each price factor calculated and the point value of each non-price factor determined. In order to allow the price and non-price values to be combined, the total evaluated price value will be converted to points and then added to the non-price value.

As an example for the Price Evaluation, all proposals that pass the Non-Responsiveness and Threshold Tests shall be evaluated with regard to their value to Delmarva's SOS customers. As explained above, the price evaluation shall

award ~~338~~ of the 60 available points in this category- to the proposal with the lowest expected cost to Delmarva's SOS customers, and ~~2045~~ points to the proposal with the greatest level of expected price stability. All other proposals shall be scaled to the lowest cost proposal and to the proposal with the greatest level of expected price stability. The specifics of the bid evaluation methodology, the assumptions used, the scenarios used and the system to convert results to point scores will be developed by Delmarva and its consultant and be approved for use by the State Agencies and their Independent Consultant prior to the receipt of bids.

For the Non-Price Evaluation, the evaluators shall use their professional judgment to assign scores that fall within the range of points available for each factor. Delmarva shall use experts in each of these areas to assign such points. If there is more than one evaluator for a given factor, the score for that factor shall be the average of the number of points assigned by each evaluator. The Independent Consultant may conduct a parallel evaluation, and if so, Delmarva and the Independent Consultant shall use good faith efforts to reconcile their respective evaluations.

After its analysis is complete, Delmarva and the Independent Consultant shall prepare- reports for the public agencies that provides their recommendations for the project(s) that should receive PPAs,- along with justification for such recommendations. There may be both public and confidential versions of the reports.

## **2.6. MEASURES TO PROTECT AGAINST THE POTENTIAL FOR SELF-DEALING**

In order to assure that that any affiliate of Delmarva that submits a bid in response to the RFP does not receive any favorable treatment compared to other bidders and to require a functional separation between Delmarva's bid evaluation team and any affiliate planning to submit a bid as well as employees or contractors of Delmarva that may be working on a self-build proposal under active development in the context of Delmarva's RFP, -Delmarva shall comply with the FERC code of conduct rules and implement the following procedures:

- 1) Any proposal submitted by a Delmarva affiliate will be submitted on or by December 21, 2006 (one day in advance of the date that all other proposals are due) and will be submitted to the Commission and Delmarva at the same time.
- 2) No employee working on an affiliate bid or a self-build option under active development (in the context of the IRP) -will be allowed to participate in the bid evaluation process as a member of the bid evaluation team or to communicate with any member of the bid evaluation team and visa versa. All

employees associated with the bid evaluation team will be required to sign confidentiality agreements protecting the confidentiality of bidder information.

- 3) All requirements of the RFP, including security requirements, shall apply to any affiliate of Delmarva that submits a bid in response to this RFP.

### 3. PAYMENTS AND SECURITY

#### 3.1 INTRODUCTION AND OVERVIEW

The Company will pay successful bidders separately for capacity and energy. A significant objective of this RFP is to procure long-term capacity and energy under a payment structure that provides price stability to Delmarva's customers. Bidders shall also provide and Delmarva shall pay for ancillary services as described below.

Bidders are required to offer fixed pricing, or prices tied to a publicly-available index, and must specify the index to which their bids will be tied. When indices are used in formulas in any component of the price bid, Delmarva recommends the bidder use the index value from the previous year (or period) when calculating prices during a given year (or period). Due to the time lag associated with the reporting of the actual index value, this will assist in the ability to administer price formulas in the contract.

The prices on which the various payments will be based are as follows:

- (1) Capacity Price — Delmarva will make monthly capacity payments according to the specified Capacity Price tied to a stated MW level, which may be adjusted based on plant performance in accordance with the price adjustment mechanism set forth in Attachment 3 of the Term Sheet.
- (2) Energy Price — Monthly energy payments will be the product of the number of MWhs delivered to the Delivery Point in the month, times the amount in the winning bidder's Energy Price (cents/kWh), adjusted by indices, if so specified in the PPA.
- (3) Ancillary Services Price — Bidders will provide and be paid monthly for ancillary services. The bidder should specify the ancillary services that Delmarva will be provided and whether compensation for the service is included within capacity payments or if not, the compensation to be paid. If such ancillary services are not under the direct dispatch and control of Delmarva, the

bidder should specify the manner in which aggregate System revenues from those services will be determined and allocated to Delmarva.] ~~[Delmarva should provide clarification regarding payment for ancillary services. The Term Sheet (“Compensation”) provides that compensation for Ancillary Services shall be through capacity payments and not through separate charges for ancillary services.]~~

- (4) Renewable Energy Credits—Delmarva shall pay for Renewable Energy Credits from renewable projects monthly based on RECs produced and provided to Delmarva times the stated REC price.

### **3.2 START DATE FLEXIBILITY**

Delmarva prefers that the capacity sought through this RFP become available no later than June 1, 2013. Delmarva prefers earlier commercial operation dates, particularly for those projects that provide price stability.

### **3.3 TERM OF CONTRACT**

Delmarva will only consider proposals with capacity and energy terms of 10-25 years. If the facility proposed is not constructed, Delmarva shall have the right to terminate the PPA as provided for in the PPA.

### **3.4 SECURITY REQUIREMENTS**

Bidders with whom contracts are established will be required to post Security which shall be available to pay Delmarva pursuant to the PPA, and to provide Delmarva with confidence that the selected bidder will construct the Facility to meet the Construction Milestones described below. The security posting shall also provide security to Delmarva to cover damages, including but not limited to replacement power costs and transaction costs for the Delmarva SOS customers, should the Facility fail to achieve the Commercial Operation Date or in the event of failure to meet the performance standards described in the PPA resulting in an event of default. If at any time after execution of the PPA the bidder(s) does not meet the security posting requirements, the PPA may be terminated at Delmarva’s option as per the PPA’s terms.

#### **3.4.1 Security Schedule and Level**

Before the in-service date(s) of the project(s), the bidder security posting will be as per the following schedule:

- 3.4.1.1 Bidder shall establish security at a level of \$50/kW of the contracted capacity value (kMW) at the time the PPA is executed with Delmarva. The contracted

capacity value will be the highest contract summer net dependable capacity level for the project rating of the project as specified by Seller for any month in the PPA multiplied by Buyer's percentage entitlement to capacity and energy from the project.

- 3.4.1.2 Upon approval of the PPA for rate recovery by the relevant regulatory authorities, the security posting requirement will be raised to \$100/kW of contracted capacity as described in section 3.4.1.1 above
- 3.4.1.3 For wind projects and other intermittent renewable energy projects, the amount of security required would be 40% of the normal required security for other projects in conformance with the requirements listed in 3.4.1.1 and 3.4.1.2 above (for wind projects, nameplate capacity of wind turbines will be used in calculating the required security multiplied by Delmarva's entitlement multiplied by 40%).
- 3.4.1.4 Upon the Initial Delivery Date~~Commercial Operation Date~~, the before in-service date(s) security postings requirements will be discontinued.
- 3.4.1.5 Upon the Initial Delivery Date, At the start date under the PPA for power delivery under the PPA, the bidder will be required to post and maintain security in the amount equal to the anticipated replacement cost for the PPA (i.e., Delmarva's SOS customer exposure). The security posting will cover a two-year forward period, which is the minimum period that Delmarva estimates it will take to obtain and have governmental and regulatory approval of an equivalent replacement contract subject to a cap of \$200/kW. The replacement contract cost will be valued as the expected PJM RPM capacity value (or a mutually agreed-upon equivalent) for the delivery year plus the energy cost as measured by NYMEX Henry Hub forward price index times an 8,000 BTU/kWh implied heat rate (Delmarva reserves the right to change the implied heat rate subject to the nature of the PPA agreement). The security posting for PPA replacement cost will be marked-to-market daily for the rolling two-year forward period beginning on that day.

A seller with an investment grade parent -could provide a parent guarantee capped at the \$200/kW level once the Initial Delivery Date of its plant has been achieved. The amount of liquid collateral it would be required to provide would be based on the amount calculated based on the anticipated replacement power cost and Delmarva's credit rules specified in the PPA regarding liquid collateral. A seller without an investment grade guarantor would be required to post the full \$200/kW in the form of a letter of credit or other credit support acceptable to Delmarva.

Bidders will be responsible for informing Delmarva of changes in milestone status and of the in-service status of the project.

In addition, any delay in the in-service date beyond the date agreed upon in the PPA, subject to allowed force majeure extensions, shall require Seller to pay liquidated damages ("Delay Damages") of \$7.00/kW-month (\$2.80/kW-month for an intermittent renewable energy project) for up to twelve (12) months which will be assessed on a daily basis for each month the facility(ies) is not available against the highest contract capacity for the project specified by Seller for any month net summer capability rating of the project multiplied by Delmarva's entitlement. Further, such delay entitles Delmarva not to accept power under the PPA until the plant is on-line.

In the event Delay Damages are assessed and Seller does not timely pay such Delay Damages, Delmarva shall have the right to access equivalent portions of the development period security and Seller shall replenish the security fund to the required level within fifteen (15) business days after any draw on the Security Fund by Delmarva. If the Seller fails to provide adequate security and/or extension upon 60 days notice, Delmarva may withhold cash from future payments in the amount of the deficiency in the security or terminate the PPA. The PPA may provide for interim milestones prior to the Commercial Operation Date, with Delmarva rights to access liquidated damages in the event of a delay inconsistent with Seller's ability to timely meet the Guaranteed Initial Delivery Date; provided, that the total amount of such liquidated damages and Delay Damages shall not exceed \$84/kW (\$33.60/kW for an intermittent renewable energy project).

### 3.4.2 Forms of Security

Delmarva is willing to accept security in the following form, subject to restrictions described in Section 3.4.4 below.

An irrevocable standby letter of credit (“Letter of Credit”) in form and substance acceptable to Delmarva, from an Issuer with a senior unsecured long-term credit rating (un-enhanced by third-party support) equivalent to A- or better as determined by both Standard & Poor’s or the equivalent by Moody’s or Fitch is [required for development period security \(provided pursuant to sections 3.4.1.1 through 3.4.1.3 of this RFP\)](#) and is the preferred form of security [for operational period security \(provided pursuant to section 3.4.1.5 of this RFP\)](#). Subject to other restrictions described herein, Delmarva will accept a guarantee from an investment grade rated entity. Security provided in the form of a Letter of Credit shall be consistent with the PPA and include a provision for at least thirty (30) days advance notice to Delmarva of any expiration or earlier termination of the security so as to allow Delmarva sufficient time to exercise its rights under said security if bidder fails to extend or replace the security. Such security must be issued for a minimum term of one year.

Delmarva may accept other forms of security in its discretion. Unsecured credit as described in section 3.4.3 may be counted against the total required security posting after the delivery start date in the PPA [\(sellers that do not have an investment grade credit rating or whose parent guarantor does not have an investment grade credit rating will not be provided any unsecured credit, but their obligation to provide security is subject to the \\$200/kW cap\)](#).

### 3.4.3 Bidder Credit Limit

The amount of unsecured credit shall be capped at \$50,000,000 for the most credit-worthy entities, and shall decline as the credit rating of the bidder declines. Delmarva shall determine the maximum amount of credit allowed as a share of the company’s total tangible net worth, depending on the firm’s senior unsecured credit rating, as shown below. The amount of unsecured credit allowed for the PPA shall be the product of the total tangible net worth (TNW) times the TNW Percentage shown below, or the unsecured credit limit presented below, whichever is lower, up to the amount of the cap stated above.

| S&P Rating | Moody’s Rating | Fitch Rating | TNW Percentage | Bidder Credit Limit (Cap) |
|------------|----------------|--------------|----------------|---------------------------|
| AAA to AA- | Aaa to Aa3     | AAA to AA-   | 10%            | \$50,000,000              |
| A+ to A-   | A1 to A3       | A+ to A-     | 8%             | \$40,000,000              |

|                |                 |                |    |              |
|----------------|-----------------|----------------|----|--------------|
| BBB+ to<br>BBB | Baa1 to<br>Baa2 | BBB+ to<br>BBB | 6% | \$30,000,000 |
| BBB-           | Baa3            | BBB-           | 4% | \$20,000,000 |

If there is a difference among the ratings of the listed rating agencies, the lowest rating shall be used. Bidders must either have a credit rating from one of these three agencies or have a guarantor for the amount of security required that is considered credit-worthy by one of these three agencies, or provide 100% of the required security in [the form of](#) a letter of credit.

The Bidder Credit Limit shall be recalculated and the form of security posting adjusted based on the bidder's most recent fiscal year end audited financial statements or within 5 business days of the bidder becoming aware of any change in the bidder's senior unsecured debt rating.

#### 3.4.4 Minimum Liquid Collateral

A minimum of 10% of the security posting must be provided in the form [of](#) a Letter of Credit and any additional security posting in excess of the Bidder Credit Limit shall also be in the form of a Letter of Credit. [Further, bidders should note that the Company reserves the right to protect itself against counterparty concentration risk, and as such, may require bidder to post acceptable credit support in the form of an Irrevocable Standby Letter of Credit in amounts in excess of those described above to maintain compliance with Delmarva's credit policies, subject to the applicable security caps.](#) ~~Further, bidders should note that Company reserves the right to protect itself against counterparty credit concentration risk, and as such, may require bidder to post acceptable credit support in the form of an Irrevocable Standby Letter of Credit in amounts in excess of those described above to maintain compliance with Delmarva's credit policies.~~

#### 3.4.5 Reevaluation and Term of Security

If at some point in time after posting security the rating (as measured by Standard & Poors, Moody's or Fitch) of the entity guaranteeing the security changes but remains investment grade, the appropriate mix of the security (combined liquid collateral and unsecured credit) will be determined based on the above criteria. If at any time the rating falls below investment grade (BBB- or its equivalent), Delmarva may at its option require the project owner to post additional security of an acceptable nature and level, subject to the applicable security caps.

In sum, if the exposure of Delmarva's SOS customers is determined at some point after the delivery date under the PPA to be \$100,000,000, then the bidder must first provide \$10,000,000 (10%) in liquid collateral. Next, if the bidder has a high tangible TNW and is rated A-, they may reduce the liquid credit requirements by their credit limit of \$40,000,000. The remaining liquid security required would be \$100,000,000 minus \$10,000,000, minus \$40,000,000, or \$50,000,000; provided this amount may not exceed \$200/kW or \$80,000,000 for a project with a 400 MW contract capacity (the limit would be \$80/kW or \$32,000,000 for an intermittent renewable energy project with a 400 MW contract capacity).

As part of this process, Delmarva reserves the right to request further financial information from bidder(s) or its credit support providers. ~~[As part of this process, Delmarva reserves the right to request further financial information from bidder(s) or its credit support providers. Delmarva may require the successful bidder(s) (or its credit support provider(s)) to post a form of acceptable credit support to ensure the bidder's performance under the terms of the Proposal. The amount of acceptable credit support, if required, will be in an amount determined by Delmarva's evaluation of the bidder's credit condition in conjunction with a determination of the financial and performance obligations of the bidder under the terms of the Proposal. [Delmarva should explain why it is necessary and equitable to have such broad additional discretion regarding credit support or propose that this be deleted or limited].~~

#### **4. TECHNICAL REQUIREMENTS AND PREFERENCES**

From a technical perspective, Delmarva requires all facilities to be in compliance with PJM Manual 14D, Generator Operational Requirements, Revision 7, effective date June 19, 2006, and the Conectiv Power Delivery - Technical Considerations Covering Parallel Operations of Customer-Owned Generation (May 9, 2003).

## 5. SCHEDULE

The overall schedule for this RFP is provided below, and described in this section.

| EVENT                                                                           | DATE/DEADLINE                                         |
|---------------------------------------------------------------------------------|-------------------------------------------------------|
| Issuance of RFP by Delmarva                                                     | November 1, 2006                                      |
| Submission of written questions and registration for pre-bid meeting            | November 10, 2006                                     |
| Pre-bid conference                                                              | November 15, 2006; access provided for bidders to PPA |
| Notice of Intent due                                                            | November 22, 2006                                     |
| Final questions from bidders due                                                | November 29, 2006                                     |
| Filing of IRP by Delmarva                                                       | December 1, 2006                                      |
| Recommended submissions date for proposals                                      | December 1-8, 2006                                    |
| Non-responsiveness screen completed for proposals submitted by December 8, 2006 | December 15, 2006                                     |
| Complete proposals due – all bidders                                            | December 22, 2006                                     |
| Threshold and Detailed proposal evaluation                                      | December 22, 2006 onwards                             |
| Notification of Acceptance for Detailed Evaluation                              | By January 5, 2007                                    |
| Delmarva and Independent Consultant recommendations to State Agencies           | Early February 2007                                   |
| State Agencies decision                                                         | By February 28, 2007                                  |
| Regulatory approval of PPA(s)                                                   | By June 30, 2007                                      |
| Project On-Line Date                                                            | June 1, 2013 or earlier                               |

### 5.1 PRE-BID CONFERENCE - November 15, 2006

Two weeks after the issuance of the RFP, on November 15, 2006, a pre-bid conference will be held near Newark, Delaware. Notice of this pre-bid conference will be filed with the RFP, and the specific time and location of this meeting will be provided to each prospective bidding party who registers on or before November 10, 2006. Delmarva reserves the right to limit the number of prospective bidders' representatives in attendance. If this is necessary, Delmarva will provide sufficient advance notice to all prospective bidders affected. At this conference, Delmarva will make an in-person presentation of this solicitation process, respond to pre-submitted questions and comments, and address questions from the floor. At this meeting, Delmarva will review an example of how they intend to score selected criteria. Pre-submitted questions must be received prior to November 10, 2006 to be discussed at the pre-bid conference. The State Agency representatives and their Independent Consultant may also attend the pre-bid conference.

### 5.2 NOTICE OF INTENT (NOI) – November 22, 2006

By November 22, 2006, each prospective bidding party must advise Delmarva of its intent to submit a proposal by completing the "Notice of Intent to Bid" form included as Form A in Attachment 2 of this RFP and submitting as per the instruction on the form. Future correspondence by Delmarva regarding this RFP will be forwarded only to parties that express an intent to submit a proposal.

While this NOI would not obligate potential Bidders to submit a proposal, it will provide Delmarva with an early indication of the number of proposals it must be prepared to evaluate. In addition, when they file an NOI, potential bidders shall specify the total capacity of the project (in megawatts) and the point(s) at which the project(s) would interconnect with the transmission grid in Delaware, and provide other information, as specified on Form A in Attachment 2, so that Delmarva may begin preliminary analysis of the transmission impacts of such project(s), as indicated in Section 5.3. Delmarva expects that only serious potential bidders will submit an NOI.

### **5.3 TRANSMISSION IMPACT STUDY - By November 22, 2006**

Bidders must provide information required for Delmarva to undertake a transmission impact study on the Notice of Intent to Bid form with this RFP and return it to Delmarva by November 22, 2006. This form shall provide basic information about the project necessary for Delmarva to carry out a preliminary transmission analysis, including the size of the project, the interconnection point, and basic information on the intended operation of the project.

Bidders agree that Delmarva's assessment would be preliminary. The final network transmission cost impact would be determined by PJM's feasibility and impact studies.

### **5.4 RFP RESPONSE DEADLINE - December 22, 2006**

All proposals must be received on the RFP web site in Section 6.3 by 5:00 p.m. Eastern Prevailing Time on December 22, 2006. Bidders may not initiate any modifications to their proposal(s) after December 22, 2006. Bidders are strongly encouraged to submit their proposals before December 22, 2006 to facilitate the evaluation process.

### **5.5 NOTIFICATION OF NON-RESPONSIVENESS - For proposals filed early**

All proposals will be given an initial examination for responsiveness. Any bidder submitting a proposal by December 8, 2006 that is found to be non-responsive will be contacted by December 15, 2006 and shall be given seven calendar days to correct the deficiency(ies). Failure to respond

within the required time, or failure to adequately correct the proposal's deficiency(ies) will result in rejection of the bid. Proposals received after December 8, 2006 can not be assured that the bidder will be contacted by Delmarva for non-responsiveness or, if contacted, that the bidder will have sufficient time to correct the deficiency(ies).

Bidders may also be disqualified at any time during the solicitation process for non-responsiveness.

## **5.6 NOTICE OF DETAILED EVALUATION - January 5, 2007**

Bidders whose proposals are selected for consideration in the Detailed Evaluation phase will be notified by January 5, 2007, and may be contacted to address any questions Delmarva has about the proposal. Bidders will be required to respond to Delmarva's questions within three business days unless otherwise specified.

Delmarva expects to negotiate with highly-ranked bidders to obtain better terms and mutually advantageous changes to proposals. Bid prices (including pricing formulas) will not be the subject of negotiations.

## **5.7 NOTIFICATION TO -BIDDER(S)**

Delmarva and the Independent Consultant anticipate completing their evaluations in time to submit their reports, including their recommendations, in early to mid-February -2007. At this time the recommended bidder(s) if any, will be notified of their preliminary selection as will bidders whose proposals are not recommended for approval.

## **5.8 NEGOTIATIONS AND AWARDS**

As part of the detailed evaluation process, Delmarva will attempt to address and potentially resolve contract exception issues for high-ranking bidders as time permits. If the State Agencies authorize and/or direct Delmarva, under a final order approved by the State Agencies, to finalize contract -negotiations with a specific bidder(s), Delmarva will do so. The negotiation process must be organized and conducted so that the process is completed in a timely manner. The negotiating team will consist of Delmarva staff members, and outside technical and legal experts, as deemed necessary by Delmarva. The final PPAs must have all required Company corporate approvals. The Independent Consultant may also participate in this process.

## **5.9 STATE AGENCY APPROVAL**

Once the -PPAs have been executed, [if anym](#), the PPAs must be presented to the appropriate State Agencies for approval.

## **6.0 PROJECT ADMINISTRATION**

### **6.1 RECEIPT OF PROPOSALS**

Prospective bidders must file electronic applications [at the secure website identified below. [\[\[TBD\]\]](#) The State Agencies' Independent Consultant shall have access to the secure website. For any materials which cannot be submitted electronically, ten bound paper copies should be delivered to:

Lezael [HaynesRorie](#)  
ICF International  
9300 Lee Highway  
Fairfax, VA 22031

In addition, one bound and one unbound copy should be delivered to the Independent Consultant at the following address:

Jonathan Winer  
La Capra Associates  
20 Winthrop Square  
Boston, MA 02110  
(617) 557-9100

These materials shall be delivered no later than 5:00 pm Eastern Prevailing Time on December 22, 2006. Neither Delmarva nor ICF is responsible for the failure of delivery services to provide such materials before the deadline. Note that:

- Proposals will not be accepted after the deadline.
- Bidders will receive notice of Proposal receipt.
- Bidders providing proposals on or before December 8, 2006 will be advised of any missing material and given the opportunity to file this material prior to the final deadline date. Only the material previously identified as missing will be accepted at this time.

## 6.2 COMMUNICATIONS

The Evaluation Team (the Team) will consist of staff from Delmarva and the Consultant. Other than the procedures addressing affiliate proposals or Company self-build proposals set forth in Section 2.6, the procedures governing the Company's communications are as follows:

### **Communications between Evaluation Team Members and Bidders**

The Company regards communication between the Team and the bidders as confidential among the parties required to evaluate the proposals, which includes but may not be limited to the Team, the Independent Consultant and the State Agencies. The Team (as well as the Independent Consultant and the State Agencies) is not responsible for information regarding their proposals that the bidders may release.

In addition, bidders should clearly identify each page or section of information in their proposals considered by bidder to be confidential or proprietary. Delmarva reserves the right to release proposals to agents or consultants of Delmarva for purposes of proposal evaluation. Delmarva's disclosure standards and policies will contractually bind such agents or

consultants. In addition, Delmarva will release proposals and related submittals to the Independent Consultant retained by the State Agencies for purposes of proposal evaluation; the Independent Consultant will make reasonable efforts to preserve bidders' confidential information.

Regardless of the confidentiality, information contained in proposals may be subject to disclosure to and review by appropriate state jurisdiction, or any other governmental authority or judicial body with jurisdiction relating to these matters or agents thereof and may be subject to legal discovery. Under such regulatory and legal circumstances, Delmarva will make all reasonable efforts to preserve bidders' confidential information, including requesting that it be filed under seal.

The Company's responses to requests for information (RFIs) from bidders will be provided to all bidders by posting the RFI and the response on the private section of the RFP website, unless the question specifically pertains to a defined and confidential project-specific issue. In that case, the Company may respond only to the specified bidder. Proposals will be scored only on the basis of written material formally submitted to Company. Any information the Company receives by other means will not be considered unless confirmed in writing by the bidder.

RFIs from bidders shall be submitted no later than 5:00 pm on November 29, 2006, to allow sufficient time for Delmarva to respond and enable Bidders to act upon that information in time to submit their proposals.

### **Web-Site Communication**

Throughout this process, bidders wishing to contact the Team shall do so through the web site identified below. Except for the pre-bid meeting, this web site shall be used for all contact with the Team on this solicitation, including questions that bidders wish to submit and for their proposals. Access to the public portion of the web site will be provided to all stakeholders (e.g., to ask questions prior to the due date for proposals). There shall also be a private, password-restricted section of the web site that is available only to those entities that have submitted a Notice of Intent to Bid, which shall be due no later than November 22, 2006.

The public website for general information and questions is [\[TBD\\_\\_\\_\\_\\_\]](#). On that website is a link to the private section, which requires a password to access.

Potential bidders shall not seek to influence Delmarva's or the Independent Consultant's evaluation of proposals in any way during the period from the issuance of this RFP to the completion of the contracting process under a PPA. Attempts to do so may be grounds for disqualification from the review process.

**Requests for Information (RFI) from the Company**

The Company reserves the right to request bidders to clarify information in their Proposals. The Team will forward any RFIs to the affected bidder. The bidder will have three business days to respond to the RFI. Once the RFI response is received, it will be distributed to relevant reviewers to complete the analysis of the bidder's proposal. If a bidder elects not to respond to an RFI, its Proposal may be withdrawn from consideration in the RFP process.

### **6.3 DOCUMENTATION**

The Company shall maintain documentation, including evaluation sheets and analysis, used as the basis for recommending preferred proposals. Such documentation may be used to provide support before the Delaware Public Service Commission to demonstrate that Company's proposal recommendation process resulted in an appropriate portfolio of generation resources and to demonstrate that the evaluation of proposals was fair. Each member of the Team will provide the Consultant with a copy of their evaluation sheets and analyses of each proposal, and the Consultant will maintain an accurate database of the rankings and associated scores. In addition, Team members shall maintain documentation of issues that relate to each proposal. These documented issues may be addressed in the detailed evaluation process with the selected bidders and/or the Independent Consultant. The Independent Consultant will use a similar process.

### **6.4 DISQUALIFICATION OF BIDDER'S PROPOSAL**

Proposals may be disqualified if they do not meet the Non-Responsive or Threshold Criteria described in the RFP. In addition, if a bidder does not respond in the timeframe indicated by Company to an RFI from Company, or attempts to communicate with the Delmarva Evaluation Team in ways not permitted under this RFP, such bidder's proposal may be disqualified at that time.

### **6.5 APPROVAL FOR ELIGIBLE PROPOSALS**

During the proposal evaluation process, the Team and the State Agencies, supported by the Independent Consultant, will determine whether or not a proposal will proceed to the next phase at several stages, including the review of the Non-Responsive Criteria and Threshold Criteria evaluation. Elimination of any project at any point in the evaluation process is subject to Independent Consultant review and State Agency approval. While Delmarva and the Independent Consultant may make recommendations regarding selection of a final award group, the State Agencies will make the decision whether a proposal, if any, should result in a PPA to be executed by Delmarva.

### **6.6 NON-DISCRIMINATION POLICY**

Throughout the RFP evaluation and negotiation processes, Delmarva will not discriminate between, or grant preferences to any bidder based on race, gender, ethnic origin, creed, or religion, in accordance with legal requirements. Company's consideration, evaluation, and selection of proposals shall be entirely based on the merits of each Proposal as set forth by the RFP document, and not upon unrelated factors.

## DEFINITIONS

In addition to terms defined elsewhere in this Agreement, the following definitions shall apply hereunder:

“Affiliate” means, with respect to any entity, any other entity that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such entity. For this purpose, “control” means the direct or indirect ownership of fifty percent (50%) or more of the outstanding capital stock or other equity interests having ordinary voting power.

“Ancillary Services” shall have the meaning ascribed thereto in the PJM Agreements.

“Business Day” means any day except a Saturday, Sunday or a day that PJM declares to be a holiday, as posted on the PJM website. A Business Day shall open at 8:00 a.m. and close at 5:00 p.m. Eastern Prevailing Time (“EPT”).

“Credit Rating” means, with respect to any entity, the rating then assigned to such entity’s unsecured, senior long-term debt obligations (not supported by third party credit enhancements) or if such entity does not have a rating for its senior unsecured long-term debt, then the rating then assigned to such entity as an issuer rating by S&P, Moody’s or Fitch.

The “Delivery Point” for the contracted energy shall be specified by the bidder, which shall either be (a) the Delmarva Zone or (b) the project’s Interconnection Point in the Delaware portion of the Delmarva Zone. The Interconnection Point will be the PJM bus to which the generator is electrically connected, or the closest location thereto monitored for Locational Marginal Price by PJM.

“Delmarva Zone” means that aggregate of busses as listed on the PJM website and aggregated by Delmarva.

“Eastern Prevailing Time” or “EPT” means Eastern Standard Time or Eastern Daylight Savings Time, whichever is in effect on any particular date.

“Energy” means three-phase, 60-cycle alternating current electric energy, expressed in units of kilowatt-hours or megawatt-hours.

“Fitch” means Fitch Investor Service, Inc. or its successor.

“Guarantor” means any party, who may agree to guaranty Seller’s financial obligations under this Agreement pursuant to an agreed on guaranty agreement, recognizing that such a party will be obligated to meet Buyer’s credit requirements for Seller.

“kWh” means one kilowatt of electric power over a period of one hour.

“Letter(s) of Credit” means one or more irrevocable, transferable standby letters of credit issued by a U.S. commercial bank or a foreign bank with a U.S. branch, with such bank having a senior unsecured credit rating of at least A- from S&P or A3 from Moody’s and a minimum of \$10 billion in assets, in a form acceptable to the Party in whose favor the letter of credit is issued. Costs of a Letter of Credit shall be borne by the applicant for such Letter of Credit. The Party to whom the Letter of Credit is in favor reserves the right to monitor the financial position of the issuing bank and, if the issuing bank’s Credit Rating is downgraded by any increment; then the Party has the right to demand and receive, from the applicant for the Letter of Credit, that the Letter of Credit be reissued from a bank that meets or exceeds the credit ratings and asset valuation listed above.

“Moody’s” means Moody’s Investor Services, Inc. or its successor.

“Network Integration Transmission Service” shall have the meaning ascribed to it in the PJM Agreements.

“PJM” means the PJM Interconnection, LLC or any successor organization thereto.

“PJM Agreements” means the PJM OATT, PJM Operating Agreement, PJM RAA, PJM Manuals and any other applicable PJM bylaws, procedures, manuals or documents, or any successor, superseding or amended versions that may take effect from time to time.

“PJM Operating Agreement” means the Operating Agreement of PJM or the successor, superseding or amended versions of the Operating Agreement that may take effect from time to time.

“S&P” means Standard & Poor's Ratings Group, a division of McGraw Hill, Inc. and any successor thereto.

“Standard Offer Service Load” or “SOS Load” means the total sales at the retail meter, plus Unaccounted For Energy, expressed in MWh or MW, as appropriate, for a particular class(es) of retail customers being served by Buyer pursuant to the PSC Settlement, as such sales vary from hour to hour, in Buyer’s Delaware franchise service territory, as such territory exists on the Effective Date or may increase or decrease due to de minimis geographic border changes to the service territory that exists on the Effective Date. For purposes of clarification, SOS Load shall not include changes in the Buyer’s Delaware service territory which occur as a result of a merger, consolidation, or acquisition of another entity which has a franchised service territory in Delaware or a result of a significant franchise territory swap with another entity which has a franchised service territory in Delaware.

“Tangible Net Worth” or “TNW” means an entity’s total assets (exclusive of intangible assets), minus that entity’s total liabilities, each as would be reflected on a balance sheet prepared in accordance with generally accepted accounting principles, and as of the relevant date of determination most recently filed with the United States Securities and Exchange Commission.

“TNW Amount” shall equal the product of the applicable TNW Percentage and an entity’s Tangible Net Worth.

“TNW Percentage” means the percentage determined pursuant to Section 3.4.3 (Bidder Credit Limit) that is multiplied by an entity’s Tangible Net Worth to determine that entity’s TNW Amount.

“UCAP” means “Unforced Capacity” as set forth in the PJM Agreements, or any successor measurement of the capacity obligation of a Load Serving Entity as may be employed in PJM (whether set forth in the PJM Agreements or elsewhere).

“Unsecured Credit” means an amount that is the lower of: (i) the relevant Unsecured Credit Cap; or (ii) the relevant TNW Amount, as determined pursuant to Section 3.4.3 (Bidder Credit Limit).

“Unsecured Credit Cap” shall have the meaning ascribed to it in Section 3.4.3.

“Variable Interest Entity” shall mean any entity subject to FIN 46.