Binding Bid Agreement and Binding Respondent Affidavit

Consumers Energy Company
Request for Proposals for Renewable Generation Projects

2022 VGP Solicitation

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Overview

Consumers Energy Company ("Consumers Energy" or the “Company”) is seeking competitive bids in response to its 2021 Request for Proposals ("RFP") for Solar and Wind Generation Projects from participants in the MISO Energy to support its Voluntary Green Pricing Program (VGP). Enel X North America, Inc. (“Enel X") will administer a solicitation ("Solicitation”) through its solicitation website ("Solicitation Website") on Consumers Energy's behalf in accordance with its RFP. With its RFP, Consumers Energy is soliciting proposals for solar generation and wind projects as described more fully in Subsection 2.2 of the RFP document. Responses to this RFP will only be accepted through the Solicitation Website.

The general schedule for the Contracts and Bid Security Qualification stage of the solicitation process is shown below (See Subsection 3.6 of the RFP for a complete solicitation timeline):

Respondents & Project Notices to Proceed Issued (Phase 1 Notice to Proceed)	May 6, 2022
Binding Bid Agreements, Binding Respondent Affidavits Due	May 16, 2022
Pre-Bid Financial Security Due	May 16, 2022
Final Notices to Proceed Issued (Phase 2 Notice to Proceed)	May 23, 2022

Materials in support of the Contracts and Bid Security Qualification stage of the solicitation process must be submitted through the RFP Email Address (VGPRFP@enel.com) by no later than 5:00 PM EPT on the submission dates detailed above. Respondents are strongly encouraged to proactively submit their Contracts and Bid Security Qualification forms and materials advance of the stated submission deadlines.

Submission Instructions

Required forms in support of the Contracts and Bid Security Qualification stage have been created as Microsoft Word documents with editable fields. Information must be entered directly into the fields provided; please ensure that all fields are completed. The Binding Respondent Affidavit must be printed, signed by an authorized representative of the Respondent that can bind the Respondent to the terms and conditions of the solicitation process, notarized, and then scanned and emailed to the RFP Email Address

(VGPRFP@enel.com)

Coversheet and Checklist

Date

Name of Respondent (Legal name of Organization or Individual Respondent)

The following are enclosed:

- ☐ Coversheet and Checklist
- ☐ Form 1 – Binding Bid Agreement
- ☐ Form 2 – Binding Respondent Affidavit
- ☐ Respondent Attachments (list below)

The following Respondent-provided form(s) have been included as attachments:

Form 1 – Binding Bid Agreement

Consumers Energy Company RFP for Solar and Wind Projects

Insert Respondent Company Name , ("Respondent") agrees to be bound on the applicable Transaction Date (defined below) by all price and volume bids (each a "Bid" and, collectively, the "Bids") entered by or on behalf of Respondent with respect to the Consumers Energy Company Request for Proposals for Solar and Wind Generation Projects with bid due dates of **May 31, 2022 proposals** ("Bid Due Dates") in accordance with the Consumers Energy Company Request for Proposals dated **March 17, 2022** (as may be updated, the "RFP") and each such Bid constitutes a firm offer to enter into the applicable transactions offered in the Bids ("Transaction(s)") in accordance with the RFP. Bids will not be subject to any contingencies or conditions.

All Respondents will be bound by their Bids until at least **August 31, 2022** ("Valid Proposal Duration"). Respondents selected for provisional contract award are further bound by their Bids through the execution of Definitive Agreements or **November 30, 2022**, whichever comes first. Consumers Energy Company will declare provisionally awarded Bid(s), and as a condition to preceding to negotiation of definitive agreements each Respondent declared provisionally awarded will be deemed to have represented that their respective Bid(s) are binding and in compliance with all terms of the RFP, including without limitation, Section 10.3, Contract Negotiations.

By executing this Binding Bid Agreement, Respondent agrees to:
(i) Dutifully work to execute definitive agreement(s) if selected for a provisional award; and (ii) Maintain the applicable Pre-Bid Security in accordance with the RFP; failure to do so will result in a forfeiture of the Pre-Bid Security. Respondent acknowledges and agrees that it will not attempt to change the binding terms of its Bid(s) during the exclusivity period or during negotiations of the Definitive Agreements, and any attempt do so will be considered a forfeit of the Pre-Bid Security.

Respondent agrees that if it fails, in whole or in part, to comply with this Binding Bid Agreement and the related terms of the RFP, it will indemnify Consumers Energy Company for any and all costs, damages and losses incurred in replacing and/or "covering" such Transactions, including, but not limited to any and all costs, damages and losses incurred in selecting new provisionally awarded bids, negotiating replacement Definitive Agreements for the applicable Transactions and/or holding another RFP. Respondent's liability under this paragraph will not exceed the aggregate amount of pre-bid credit posted under Section 7.5, Pre-Bid Security, for all projects included in Respondent's Bids in this RFP that Respondent does not make available to Consumers Energy Company for the full Valid Proposal Duration.

Respondent represents and warrants that it has not, directly or indirectly, entered into a bidding agreement, joint venture for the purpose of bidding in this RFP, consortium or other bidding arrangement pertaining to the RFP, and that it has not, directly or indirectly, entered into any agreement with another respondent regarding bids in the RFP, including, but not limited to, the system on which the bids are placed, when or at what prices bids are withdrawn or switched, or the amount of exit prices.

The submission of this Binding Bid Agreement constitutes the Respondent's acknowledgement and acceptance of all the terms, conditions and requirements of the Consumers Energy Company RFP.

Capitalized terms used but not defined herein will have the meaning ascribed to them in the Consumers Energy Company RFP.

The Respondent represents and warrants that the person signing on its behalf has the authority to act on behalf of, and to bind, the Respondent to perform the terms and conditions and otherwise comply with all obligations stated herein, and will not dispute such person's authority to sign this Binding Bid Agreement.

This Binding Bid Agreement may be delivered by facsimile or email, it being the express intent of the Respondent that such documents delivered via facsimile or electronically (together with the signatures thereon) shall have the same force and effect as if they were originals.

Insert Respondent Company Name

_____ _____

Authorized Respondent Representative Signature ***Date***

_____

Name in Print

_____

Title

Form 2 – Binding Respondent Affidavit

General Information:

Full Legal Name of Respondent

Operating Name (DBA) of Respondent

Name of Project (Individual Binding Respondent Affidavits are Required for Each Unique Project)

Date of Submission

Binding Respondent Affidavit Certifications, Attestations:

In response to the Consumers Energy Company Request for Proposals for Solar and Wind Generation Projects ("RFP") dated and issued on March 17, 2022, **Respondent Company or Individual Name** 's ("Respondent") **Name of Qualified Project** ("Project") submitted a Project Qualification Application and supporting materials and has received a Stage 2 Notice to Proceed or Stage 2 Conditional Notice to Proceed.

As established within Subsection 7.4 of the RFP, this form of Binding Respondent Affidavit must be completed and submitted on behalf of each qualified project a qualified Respondent intends to propose in response to this RFP.

Therefore, I, **Full Legal Name of Authorized Representative at Respondent Organization** , being duly sworn, do hereby depose and say under oath as follows:

1. My name is **Full Legal Name of Authorized Representative at Respondent Organization** and I am authorized to make the following statements on behalf of the named Respondent and the named Project.

2. All the information provided in the Project Qualification Application, Project Qualification Database, and all supporting documents and materials submitted with the Project Qualification Application and all documents and materials submitted in response to the Project Qualification Application Remediation Requirements and all documents submitted subsequent to the initial remediation deadline are accurate, true, and not misleading.

3. The Project Qualification Application, all supporting documentation and all documentation submitted in the remediation response were prepared independently and without collusion or any other action taken to restrain free, competitive bidding.

4. The Project meets or exceeds all minimum requirements outlined within the RFP and its supporting appendices.

5. All Points Based Scorecard claims by the Project and approved in the Project Notice to Proceed or Conditional Notice to Proceed issued remain accurate and true.

6. If selected for award, Respondent agrees to honor all required, non-negotiable, contract terms and conditions established within the RFP and its supporting appendices. Additionally, the Respondents affirms that it will in no way seek or make material modifications to the Consumers Energy Company Standard Contract Template(s) including, but not limited to, those that shift risk and/or liability from the supplier to Consumers Energy or its customers, changes to the product compensation structure, alterations of the facility performance requirements, and changes to the regulatory disallowance clause.

7. All submitted materials will become part of the project description attached to any agreement executed between the Project and Consumers Energy Company. I understand that all of the representations made about this Project in the Project Qualification process will be incorporated into any contract that is awarded and, as such, will be a contractual obligation for which any failure to meet may constitute a performance issue, including a breach of the agreement, for which contractual remedies, including termination, may be applicable.

8. Respondent agrees that if it is selected for contract award and fails, in whole or in part, to comply with conditions and attestations made within this Binding Respondent Affidavit and the related terms of the RFP, it will indemnify Consumers Energy Company for any and all costs, damages and losses incurred in replacing and/or "covering" such Transactions, including, but not limited to any and all costs, damages and losses incurred in selecting new provisionally awarded bids, negotiating replacement Definitive Agreements for the applicable Transactions and/or holding another RFP. Respondent's liability under this paragraph will not exceed the aggregate amount of pre-bid credit posted under Section 7.5, Pre-Bid Security, for all projects included in Respondent's Bids in this RFP that Respondent does not make available to Consumers Energy Company for the full Valid Proposal Duration (as defined in the Binding Bid Agreement previously submitted as part of the RFP).

Dated at **TOWN/CITY NAME** , **STATE NAME** this **Day Number** day of **Month** 2021.

_____ [Signature Box]
Full Legal Name of Nortary Public / Attorney at Law

STATE OF **STATE NAME**

_____, ss. **Month** **Day** **,** 2022

Personally appeared before me the above-named **Full Legal Name of Authorized Representative at Respondent Organization** and made oath that the foregoing statements are true based on [his/her] personal knowledge.

_____
Notary Public / Attorney at Law