

DUQUESNE LIGHT COMPANY

REQUEST FOR PROPOSALS

Issued

June 26, 2023

Bids Due:

September 6, 2023 5:00 p.m. EPT (Pittsburgh PA)

Web Address: [www.duquesnesolar-rfp.com](http://www.duquesnesolar-rfp.com)

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## 1. Introduction

- 1.1 With this Request for Proposals (“RFP”), Duquesne Light Company (“DLC”) is soliciting proposals from existing and in development solar generation facilities available to enter into a long term-contract for sale of its output or portion of its output with DLC as described more fully in Subsection 2.2 below. Within the context of this RFP, a “facility” can refer either to an entire solar generating station or a portion of such a solar generating facility.

The general schedule for the RFP process is shown below (see also Subsection 3.5):

- Issue RFP June 26, 2023
- Bidder Information Session July 11, 2023
- Non-Binding Notice of Intent Requested July 25, 2023
- Pre-Qualification Applications Requested July 25, 2023
- Notification of Pre-Qualification August 1, 2023
- Proposals Due September 6, 2023

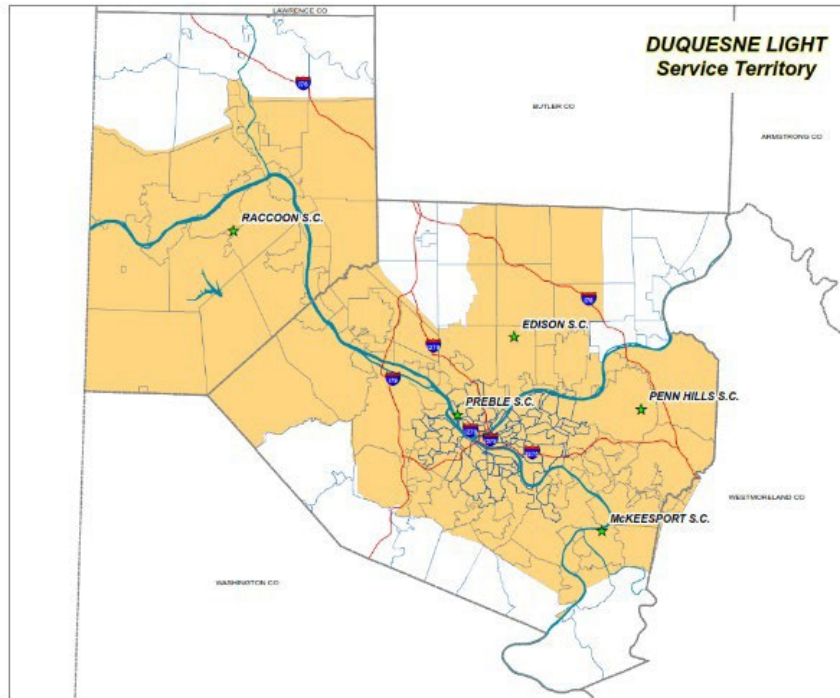
- 1.2 DLC is a regulated electric distribution utility headquartered in Pittsburgh Pennsylvania. Duquesne Light Company delivers electricity to over 600,000 customers in Allegheny and Beaver counties. As a next generation energy company, Duquesne Light Company’s nearly 1,700 employees are dedicated to delivering reliable and safe energy to more than half a million customers in southwestern Pennsylvania.

DLC is committed to providing a clean and reliable supply of electric power to its customers. In order to encourage the development of solar resources in its service territory and in the broader western Pennsylvania or statewide region, DLC seeks to enter into one or more Power Purchase Agreements (“PPA”) with solar facilities for the purchase of AEPS solar credits and renewable energy output. Solar facilities should, at a minimum, meet industry-wide reliability and performance criteria for electric generation facilities.

Accordingly, you are invited to submit a written proposal in accordance with the requirements described in this RFP. Specifically, DLC has retained Charles River Associates (“CRA”) to manage the RFP process on behalf of DLC for the purpose of soliciting bids to enter into a PPA with DLC. All proposals must meet the general requirements set forth in Section 4 (“RFP General Requirements”). All bidders with assets that meet the qualification requirements are invited to submit a bid or bids into the DLC RFP process.

CRA will serve as an independent third party to monitor and oversee the evaluation of all bids. CRA shall administer this process through its website (see Subsection 3.1) on DLC’s behalf in accordance with this RFP. Responses to this RFP will be accepted via the email [duquesnesolar-RFP@crai.com](mailto:duquesnesolar-RFP@crai.com).

# DUQUESNE LIGHT COMPANY Service Territory



More information about DLC is available by visiting the company's website at: [www.duquesnelight.com](http://www.duquesnelight.com).

## 2. **Purpose / Desired Product**

### 2.1 **Purpose**

The purpose of this RFP is to solicit offers from existing or developmental solar generating facilities located within Pennsylvania. DLC is targeting resources that will be in service at some point during the 2024/2025 PJM planning year. However, DLC will accept proposals from resources that have target in service dates later than December 31, 2024.

DLC intends to enter into to enter into PPA Agreement with the winning bidder(s) in this RFP. PPA proposals should be for a period not less than 4 years and not more than 20 years in duration, however DLC has a preference for PPA ranging from 10 to 15 years in duration.

DLC anticipates contracting with between 5 and 7 MW total across all PPA designated as winners of this RFP. To qualify, the physical facility must be located in the State of Pennsylvania and qualify as a capacity resource for the PJM Interconnection LLC.

### 2.2 **Product Description**

DLC will consider proposals to enter into a PPA contract with physical solar facilities in currently in service or in development. DLC is targeting facilities that will achieve commercial operation within PJM's 2024/2025 planning year or earlier. DLC recognizes

that a 2024/2025 in service date may be aggressive for projects in early stages of development. As a result, the Company would encourage facilities with planned in service dates later than the 2024/2025\_Planning Year to bid as well.

DLC is seeking to enter into PPA contracts for between 3 and 7 MW (AC ICAP). To reach the 3 to 7 MW target, DLC may enter into more than 1 PPA with multiple counterparties.

All Proposals must be consistent with the size and acquisition date requirements specified in Sections 4 and 5. DLC has a preference for resources located within DLC's service territory or in Western Pennsylvania. The Company will consider proposals supported by facilities over a wider region, however, the physical location of such facilities must be the State of Pennsylvania. Any proposal supported by a facility not located within Pennsylvania will be disqualified from consideration.

Projects must be utility scale facilities. Supporting projects may be existing or in development resources but DLC has a preference for projects in currently in operation or in advanced development. DLC will not accept "virtual" bids. While DLC may designate multiple proposals and projects as winners of this RFP, each *individual proposal* submitted must be supported by a single, physical resource that meets the location requirements of this RFP. DLC will accept proposals for a share of a facility that is at least 5 MW in capacity. Any proposal supported by a facility not meeting the basic qualification requirements may be disqualified from consideration.

DLC is soliciting PPA for solar credits from the solar resources under Pennsylvania's Alternative Energy Portfolio Standards Act ("AEPS" or "AEPS Act").<sup>1</sup> Through the PPA, DLC will purchase AEPS solar credits and the facility's renewable energy output (MWh) only. In reviewing proposals, DLC will not assign value to any attribute other than AEPS solar credits or solar energy. The inclusion of other attributes may detract from the proposal's score during evaluation. Project developers or owners will retain rights to all other facility output including capacity and ancillary services. Developers will be free to market such output or consume such output for their own internal needs. DLC expects and anticipates that proposal pricing will reflect the ability of the developer to market such attributes outside of any PPA with DLC.

Proposal pricing should be based on either a fixed or escalating pricing schedule denominated in dollars per MWh of output delivered to DLC. At this time, DLC will not consider solar tolling arrangements or other pricing structures than \$/MWh. The \$/MWh price should be inclusive of all AEPS solar credits and renewable energy. Any proposal not denominated in \$/MWh may be disqualified from consideration or CRA may request an update to the proposal pricing structure.

### **3. Information and Schedule**

#### **3.1 Information Provided to Potential Respondents**

This RFP and all of its appendices and forms are posted on CRA's website ([www.Duquesnesolar-RFP.com](http://www.Duquesnesolar-RFP.com)). Interested parties are expected to be able to download the RFP with its required forms and complete the forms in Microsoft Word and/or Excel format. Respondents (defined below) shall submit properly completed

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<sup>1</sup> <https://www.legis.state.pa.us/cfdocs/legis/li/uconsCheck.cfm?yr=2004&sessInd=0&act=213>

forms by the specified deadline by electronic mail to the RFP Submission Email Address (duquesnesolar-RFP@crai.com).

Respondents with Proposals over 30 MB in size should contact CRA for instructions on how to submit a Proposal via CRA's sharefile platform. Proposals that are nonconforming, not complete, or that are mailed, or hand delivered may be deemed ineligible and may not be considered for further evaluation. CRA is requesting that bidders interested in bidding submit non-binding, pre-qualification applications by the pre-qualification deadline. CRA does anticipate accepting pre-qualification applications after the administrative deadline included in this RFP. However, pre-qualifying, will ensure that prospective bidders receive deadline reminders and updates about this RFP that may be instructive for preparing responses. Any Proposals received from a Respondent that has not been pre-qualified may be deemed ineligible and may not be considered for further evaluation.

Please note that the RFP Manager (CRA) will always confirm receipt of a Proposal. Bidders that do not receive a bid confirmation should notify the RFP Manager.

CRA anticipates sending an electronic mail notice to parties that it considers likely participants in this RFP. The preparation of a Proposal may be initiated at any time provided that such preparations are completed in accordance with the instructions found in this RFP.

By submitting a Proposal in response to this RFP, the party submitting the Proposal ("Respondent") certifies that it has not divulged, discussed or compared any commercial terms of its Proposal with any other actual or prospective Respondent and has not colluded whatsoever with any other party believed to be an actual or prospective Respondent.

### 3.2 **Information on the RFP Website**

The information on CRA's website will contain the following:

- (a) This RFP
- (b) Form of Mutual Confidentiality Agreement
- (c) Pre-Qualification Document(s)
- (d) Key Commercial Terms for PPA
- (e) Standard RFP Response Form
- (f) Frequently asked questions ("FAQ") about this RFP
- (g) Updates on this RFP process and other relevant information

### 3.3 **Questions**

All questions regarding this RFP should be submitted to the RFP Submission Email Address (duquesnesolar-RFP@crai.com). All relevant questions and answers will be posted to the RFP website and made available to all process participants. Other than questions and answers submitted through the RFP Submission Email Address and posted on the RFP website, no other individual or bidder specific explanations or interpretations of this RFP will be given. Written questions will be accepted by CRA until

five (5) days before the date on which Proposals are due. The Respondent should check the web site periodically for updates and postings.

In the event that a given Respondent has a question or seeks clarification or explanation of any data or information provided in this RFP, such Respondent is responsible for obtaining the desired information by submitting a written question to CRA through the RFP Email Address by no later than five (5) days before the date on which Proposals are due.

Any and all communications regarding this RFP will be submitted through the RFP Email Address, posted on the RFP website or communicated through a public bidder information session. Under no circumstance should Respondents attempt to contact DLC employees directly with any matters related to this RFP.

### 3.4 **Clarification of Proposals**

While evaluating Proposals, CRA may request additional information about any item in the Proposal. All requests will be made in writing, and the Respondent will be required to respond to the request within five (5) business days of receipt of such request or CRA may choose to stop evaluating the Respondent's Proposal.

### 3.5 **Schedule**

The following schedule and deadlines apply to this RFP. DLC reserves the right to extend or otherwise modify any portion of this schedule at any time or terminate the RFP process at its sole discretion.

3.5.1 EPT or Eastern Prevailing Time means Eastern Standard Time or Eastern Daylight Savings Time, whichever is in effect in Pittsburgh, Pennsylvania on any date specified.

3.5.2 All Proposals are due by 5:00 p.m. EPT on the proposal due date (below). Proposals received after the specified date and time may be disqualified from further evaluation.

<b>Step</b>	<b>Timetable</b>
Notice of Intent and Mutual Confidentiality Agreement Requested	5:00 p.m. EPT, July 25, 2023
Respondent Pre- Qualification Application Requested	5:00 p.m. EPT, July 25, 2023
Respondents Notified of Results of Pre- Qualification Application Review	5:00 p.m. EPT, August 1, 2023
Proposal Due Date	5:00 p.m. EPT, September 6, 2023
PPA Execution (Approximate)	Q4 2023
Regulatory Approval	Q1 2024

#### **4. RFP General Requirements**

Proposals that do not meet the following criteria may be deemed to be ineligible and not be considered for further evaluation.

##### **4.1 Respondent Pre-Qualification**

To be eligible to submit a Proposal in response to this RFP, Respondents must be pre-qualified.

To pre-qualify, Respondents must:

- (a) Submit (i) a Notice of Intent (Appendix A), (ii) a completed Mutual Confidentiality Agreement (Appendix B), and (iii) a completed Pre-Qualification Application (Appendix C) through the RFP Submission Email Address (duquesnesolar-RFP@crai.com) pursuant to Section 3 above; and
- (b) Receive confirmation from CRA that Respondent is pre-qualified to submit a Proposal.

As part of this RFP, there is a pre-qualification due date. This due date is for administrative purposes only. CRA anticipates accepting pre-qualification applications after the due date should any such applications be received. However, bidders that do not submit pre-qualification applications prior to the submission of a final bid, risk disqualification from the bidding process. By submitting a pre-qualification application, bidders will ensure they receive all relevant information about the RFP throughout the process.

##### **4.2 Facility Parameters**

All proposals must be supported by an existing or planned physical generating facility. Each specific generating facility supporting a PPA with DLC under a Proposal must:

- (a) Be located within the state of Pennsylvania.
- (b) Must be a solar powered resource, either standalone or paired with storage
- (c) Must be utility scale
- (d) Must qualify for AEPS solar credits under Pennsylvania's Alternative Energy Portfolio Standards Act

##### **4.3 Proposal Quantities and Pricing**

Through this RFP, DLC seeks between 3 and 7 MW of AC ICAP solar capacity. DLC will accept partial shares of larger facilities.

##### **4.4 Valid Proposal Duration**

Proposal pricing must be valid for six (6) months following the Proposal Due Date, upon which time Proposals shall expire unless the Respondent has been notified that its Proposal has been selected.



## 5. **Proposal Content Requirements**

This section describes DLC's expectations and requirements for the content of Proposals. Proposals that do not meet the following criteria will be deemed to be ineligible and not be considered for further evaluation. DLC expects Respondents to provide any information that could impact the Respondent's ability to enter into a PPA with Duquesne. If it appears that certain information is inadvertently omitted from a Proposal, CRA may contact the Respondent to obtain the information.

All Proposals must include a table of contents and provide concise and complete information on all of the following topics:

### 5.1 **Standard RFP Response Form**

Respondents shall provide a completed Appendix E, Standard RFP Response Form. Be advised that Appendix E may not capture all of the information required to be provided in this RFP.

### 5.2 **Executive Summary**

Proposals must include an executive summary of the Proposal's characteristics including any unique aspects and benefits.

### 5.3 **Name and Location**

Respondents shall state the name of the generating facility, the county and EDC service territory where the generating facility is located, the owner of the facility, the PJM Commercial Pricing Node associated with the facility and the commercial in-service date for the facility. The location must be in the State of Pennsylvania and serviced by PJM.

### 5.4 **Net Capability of Generating Facility**

Respondents shall state the net capability of the facility that would be applicable for each month of a calendar year as well as the nameplate capacity of the facility.

### 5.5 **PPA Start Date**

In preparing their Proposals, Respondents shall assume that the target PPA start date would be on or about a date starting as early as June 1, 2024, or upon the commercial operation date. However, DLC will accept alternative timelines to the extent that such timelines may allow for more competitive pricing.

### 5.6 **Generation Technology**

Respondents shall describe the generation technology of the facility, including the make of the key equipment.

### 5.7 **PJM Capacity**

For projects in development, the Respondent shall provide the projected ICAP (or nameplate) and the projected UCAP for the next three (3) years.

For existing facilities, Respondent shall list the facility's ICAP and the UCAP awarded to the facility for each the five (5) most recent PJM Planning Years (if in operation for 5

years) and the projected UCAP for the next three (3) years. In the event that the projected UCAP has sizable deviation from historical UCAP, Respondents shall provide a detailed explanation.

#### 5.8 **Anticipated Facility Output**

1. The estimated monthly output in MWh for each of the next five (5) years.
  - a. Respondents shall provide expected (p50 and p90) capacity factors, including hourly shapes (actual or based on weather data).

Regarding any major current and/or historical operational limitations, Respondents shall provide a description of the root causes of the limitations (e.g. original equipment manufacturer (“OEM”) design, material condition of the facility, environmental permits, etc.). To the extent that expected performance deviates from observed performance, the Respondent shall provide the basis for the assumption.

#### **Counterparty Financial Information**

Respondents shall submit audited or unaudited Financial Statements including Balance Sheets, Income Statements and Cash Flow Statements for the proposed PPA counterparty. Respondents should provide this information for the past three years.

#### **Other Contractual Commitments**

Respondents shall state whether there are other contractual commitments limiting or affecting the operation of the facility. Respondents shall state whether there are any other agreements in place for or claims on output from the facility. Such information should include any obligations that may restrict or compromise DLC’s rights to facility output.

Bidders are expected to highlight any risks associated with the project’s ability to replace any key existing contracts (e.g., service agreements, maintenance, etc.) that may be required to perform over the full term of the proposed PPA duration. To the extent any such risks exist, bidders should detail mitigation plans if any.

#### **Assets in Development**

All Proposals for new generation facilities must have a well-defined and credible development plan for Respondent to complete the development, construction, and commissioning of the facility on their proposed development timeline. Respondents submitting proposals for new or planned facilities should review the “Development Risk” evaluation metric and be sure to discuss key development milestones in their Proposal.

If available, Respondents shall submit:

1. a copy of an executed pro-forma PJM Service Agreement and Interconnection Construction Services Agreement,
2. a copy of a completed PJM Facilities Study,

3. a copy of a completed PJM System Impact Study, and

If Respondent cannot provide this information, Respondent must indicate why it cannot be provided and must provide a timeline showing ability to complete key development milestone requirements prior to June 1, 2024 including the above referenced items for the PJM generator interconnection queue.

Respondent shall also detail its PJM generator interconnection queue position and PJM queue number, if available. Respondent shall provide the types and amounts of transmission service requested (e.g. 50 MW of NRISand/or 25 MW of ERIS). Respondents submitting Proposals for a new or planned generation facility should also submit a copy of a fully executed EPC contract if available.

Respondents should also provide the following:

1. Roles and responsibilities of the companies involved in the design, development, procurement and construction of the facility. Information about key contributors shall extend to the status of contractual relationship with each key contributor; key contractual assurances, guarantees, warranties or commitments supporting the Proposal, including an executed EPC contract, and any past experience of Respondent working with each key contributor.
2. Description of status of major equipment procurement, as well as processes for engineering, procurement, and construction bids and awards.
3. Description of the facility site and Respondent's rights (*i.e.*, whether owned, leased, under option) to such site. Please indicate whether additional land rights are necessary for the development, construction, and/or operation of the facility.
4. Discussion of the development schedule and associated risks and risk mitigation plans for that schedule, including whether there are contract commitments from contractors supporting the proposed schedule. The Respondent should be prepared to document and commit to a proposed development schedule, which should include a commercial operations date.
5. Discussion of the financing arrangements secured by the Respondent, including an overview of the sources of funds, and level of commitment from debt, equity, or other investors.
6. Discussion of permitting, including a list of all required permits, permitting status of each, and key risks to securing necessary future permit approvals.
7. Description of status in PJM queue process and presentation of documents described above.
8. Financial information regarding guarantors and sources of equity funding along with either the Respondent's or guarantors' senior unsecured debt and/or corporate issuer ratings documentation from Moody's and Standard & Poor's showing the name of the rating agency, the type of rating, and the rating of the Respondent or guarantor.

DLC will not assume any responsibility for the successful development, construction, interconnection and/or completion of a proposed facility. Accordingly, development schedule, budget, permits and approval risk will be the sole responsibility of the Respondent.

### **Power Purchase Agreement**

DLC has included Key Commercial Terms for any proposed PPA as part of the RFPs to provide an example of the type and nature of Agreement that DLC would anticipate negotiating during the definitive agreement phase of the process. These terms and conditions shall not be binding on DLC. The shortlisted Respondent and DLC will negotiate a mutually acceptable agreement to govern any commercial relationship established by the parties. Respondents should download the Key Commercial Terms from the RFP website ([www.Duquesne solar-RFP.com](http://www.Duquesne solar-RFP.com)). Respondents should propose changes to the Key Commercial Terms, if necessary, in redline form. DLC is open to other alternative contractual arrangements.

### **Asset Performance**

For all contractual structures, bidders should specify the “guarantees” associated with their proposal. For example, mechanical availability, anticipated production under given conditions, etc.

Respondents shall clearly articulate expected performance metrics which may include performance guarantees and metrics, etc.

#### 5.13 **Permits**

Existing facilities must have all relevant environmental and other permits necessary for its operation and maintenance. Respondents shall provide a description of all permits currently in place for the operation and maintenance of the facility.

Respondents shall provide a description of any identified environmental liabilities (e.g., potential site remediation requirements, pending future regulatory requirements, etc.) for the facility.

#### 5.14 **Operating Data**

Respondents shall provide any historical operating data consisting of: (1) net generation in MWh, (2) the commercial operation date of the facility, (3) the annual facility UCAP awarded

Respondents shall provide details on any equipment health issues and concerns, including the potential drivers and recommended mitigation procedures for the issues and/or concerns.

#### 5.15 **PPA Pricing**

Respondents shall submit a PPA price associated with their bid. DLC will accept a fixed or escalating pricing structure denominated in \$/MWh. The evaluation of the bids will be based on the anticipated cost and inherent uncertainty associated with proposed PPA pricing structure.

## 5.16 **Environmental and Sustainability Considerations**

Respondents should highlight any environmental or sustainability attributes associated with their project or proposal. Examples include the use of pollinator-friendly wildflowers and deep-rooted perennial grass as the groundcover of solar farms.

Developers should highlight any plans or strategies with respect to Electronic Product Environmental Assessment Tool (“EPEAT”) or cradle to cradle sustainability certifications or other sustainability considerations.

## 5.17 **Community and Other Considerations**

Respondents shall highlight their impact on the community and, in particular, communities served by DLC.

Bidders should identify if their project is location within one of Pennsylvania “Keystone Communities” enterprise development zones.

To the extent that a bidder qualifies as a diverse business as is outlined by the Duquesne Light Supplier Diversity policy <https://www.duquesnelight.com/working-with-us/dlc-suppliers/dlc-supplier-diversity>, or a not-for-profit entity, such qualification should be highlighted in the proposal.

Proposal evaluation will consider and award points for all of the above considerations. Bidders should highlight these any other community considerations and attributes.

## 6. **Minimum Bid Eligibility Requirements**

This section outlines the minimum requirements that all Proposals must meet to be eligible to participate in this RFP. Proposals unable to meet the following criteria will be deemed to be ineligible and not be considered for further evaluation.

- Respondents must meet the general requirements in accordance with Section 4 of this RFP.
- Proposals must include all content requirements described in Section 5 of this RFP, including all requested information and completed forms.

## 7. **Bid Evaluation and Contract Negotiations**

### 7.1 **Initial Proposal Review**

After the Proposal Due Date, CRA will review all responses for completeness, responsiveness and compliance with the minimum bid eligibility requirements specified in Section 6 of this RFP. CRA will not accept updated pricing from Respondents during the evaluation period unless such information is requested by CRA. Preliminary due diligence will also be conducted at this stage to identify any flaws associated with the bid that would make it unacceptable. As a result of this screening, CRA may either eliminate bid(s) from further consideration, or contact Respondent(s) to clarify information or request additional information. CRA will make such requests in writing via email and Respondents will be required to respond to the request within five (5) business days of receipt of such request or CRA may choose to stop evaluating a Respondent’s Proposal (see Section 3).

## 7.2 **Shortlist Development**

Proposals that meet the requirements in Section 6 will be evaluated consistent with the process the evaluation criteria associated with this RFP. Points will be awarded and deducted based on:

1. The Levelized Cost Energy (“LCOE”)
2. Development Status
3. Development Risk and Other Risk Factors
4. Facility Location
5. Minority or Women Owned Business
6. Contract Duration
7. Environmental Considerations
  - a. Examples include pollinator-friendly wildflowers and deep-rooted perennial grass as the groundcover of solar farms, or other environmental considerations, benefits, or accommodations.
8. Sustainability Certifications - EPEAT, Cradle to Cradle
9. Other Asset or Proposal Specific Benefits and Risk Factors

DLC anticipates contracting with the asset or assets that, in total, best meet DLC and customer needs. Bids will be rank ordered based on the stated evaluation criteria and assets will be selected for advancement based on DLC’s needs. Consistent with that objective, DLC may need to contract with multiple generating assets. In order to secure the overall portfolio of assets that best meets DLC’s needs, there is no assurance that the individual, highest-scoring qualified proposal(s) will be selected due to the fixed MW associated with each individual bid.

During the evaluation process, DLC and/or CRA may choose to initiate discussions with one or more Respondents. In that event, CRA will be the sole conduit of information between Respondent and DLC. Discussions with a Respondent shall in no way be construed as commencing contract negotiations.

## 7.3 **Contract Negotiations / Definitive Agreements**

DLC’s commencement of and participation in negotiations shall not be construed as a commitment to execute a PPA. Only execution of a Definitive Agreement (an agreement executed by both DLC and the Respondent on mutually acceptable terms) will constitute a “Winning Proposal”.

## 8. **Credit Qualification and Collateral**

Bidders submitting “Winning Proposals” may be required to post collateral at the time of execution of Definitive Agreements. CRA and DLC will evaluate the credit quality and related collateral posting requirements for each Respondent submitting a Proposal(s) in accordance with a uniform and consistent application of DLC’s risk management practices

and standards, in two phases: (i) as part of CRA's evaluation of a Respondent's pre-qualification application; and (ii) if a Respondent is selected, during the negotiation of the Definitive Agreement.

Credit worthiness requirements are as follows:

Respondent counterparties that have a minimum investment grade credit rating shall be deemed to have met the credit worthiness standard and shall not be required to post Definitive Agreement Collateral ("DA Collateral"). A minimum investment grade credit rating is defined as the most recently published unsecured senior long term debt rating (or corporate issuer rating if unsecured long term debt rating is not available) of **BBB-** from Standard & Poor's (S&P) Fitch or or **Baa3** from Moody's Investor Service (Moody's), respectively. If the Respondent is rated by more than one agency and the ratings differ, the lowest rating will be used.

- If a Respondent counterparty is either not rated by the aforementioned public rating agencies or has ratings below investment grade as defined above, the creditworthiness standard may be met with cash, a letter of credit or by issuing a corporate guaranty from an acceptable credit support provider that satisfies the above minimum investment grade standard.
- DLC's acceptance of a corporate guaranty shall be subject to a satisfactory review of the credit support provider that is issuing the guaranty. In addition, the guaranty shall be in a form acceptable to DLC.

Any Respondent that does not meet the above creditworthiness requirements (or provide an acceptable guaranty) shall have the corresponding obligation to post DA Collateral as determined by DLC and codified in the Definitive Agreement only if selected as a Winning Proposal for the Definitive Agreement phase of this RFP. DA Collateral must be posted at the execution of the Definitive Agreement and will be in force until the facility achieves commercial operation. The amount and form of DA Collateral will be subject to negotiation at the time of execution of the Definitive Agreement. Collateralization of the agreement will ensure Respondents meet the anticipated in-service dates for in development projects and expected availability targets under the final agreement once operational.

## 9. **Reservation of Rights**

DLC reserves the right, without qualification, to reject any or all Proposals and to waive any irregularity in submitted information. There is no assurance, expressed or implied, that any agreement will be executed pursuant to this RFP. DLC may terminate negotiations with any bidder at any time without liability.

Bidders are advised that any agreement executed by DLC and any selected respondent may not be an exclusive contract. In submitting a proposal, bidders will be deemed to have acknowledged that DLC may contract with others for the same or similar deliverables or may otherwise obtain the same or similar deliverables by other means and on different terms.

DLC also reserves the right to evaluate all Proposals received in any manner it elects to employ, to solicit additional Proposals if it is deemed necessary to do so and the right to

submit additional information requests to Respondents during the Proposal evaluation process.

This RFP shall not, by itself, give any right to any party for any claim against DLC. Furthermore, by submitting a Proposal, the Respondent shall be deemed to have acknowledged that DLC assumes no liability in any fashion with respect to this RFP or any matters related thereto. By submission of a Proposal, the Respondent, for itself as well as for its successors and assignees (if any), agrees that, as between Respondent and DLC, Respondent is to be solely responsible for all claims, demands, accounts, damages, costs, losses and expenses of whatsoever kind in law or equity, known or unknown, foreseen or unforeseeable, arising from or out of this RFP.

DLC shall not reimburse Respondent and Respondent is responsible for any cost incurred in the preparation or submission of a Proposal, in negotiations for an agreement, and/or any other activity contemplated by the Proposal submitted in connection with this RFP.

#### **10. Confidentiality of Information**

All Proposals submitted in response to this RFP become the property of DLC upon submittal. Respondents should clearly identify each page of information considered to be confidential or proprietary. Consistent with the NDA, DLC will take reasonable precautions and use reasonable efforts to maintain the confidentiality of all information so identified. DLC reserves the right to release any Proposals to agents or consultants for purposes of Proposal evaluation. Regardless of the confidentiality claimed, however, and regardless of the provisions of this RFP, all such information may be subject to review by the appropriate state authority, or any other governmental authority or judicial body with jurisdiction relating to these matters and may also be subject to discovery by other parties. DLC will not release any of the Respondent's confidential information to any of its affiliates who respond to the RFP.

#### **11. Regulatory Approvals**

- 11.1 Respondent agrees to cooperate, to the fullest extent necessary, to obtain any and all State, Federal, or other regulatory approvals DLC deems to be required for the effectiveness of the PPA.
- 11.2 The PPA shall be subject to and contingent on DLC obtaining Pennsylvania Public Utility Commission approval of the PPA in a form that is acceptable to DLC and not subject to further appeal.