

# Atlantic City Convention and Visitor's Authority

## INVITATION TO BID

### FOR

## RETAIL ELECTRIC GENERATION SUPPLY SERVICE #12-05

### Clarification 1

**Part A.** The initial ending times for each tranche of the auction will both be the same (11:15 am). Footnote 1 on Page A-1 of Appendix A is replaced with the following: “<sup>1</sup>This auction will include an “Auto-Extension” feature. Any **new low** bid submitted in the last 1 minute of the scheduled end time will cause the end time to extend for 2 more minutes **for both tranches**. For each pricing option, this process will repeat until no additional 'late' bids are submitted.” The table below presents a summary of the pricing options requested herein by the ACCVA, along with their associated auction parameters:

<u>TRANCHE NUMBER</u>	<u>EDC</u>	<u>ACCOUNT CATEGORY</u>	<u># of Accounts</u>	<u>SERVICE START</u>	<u>CONTRACT TERM</u>	<u>Opening Time of each Auction</u>	<u>Initial Ending Time of each Auction (Eastern Prevailing. Time)<sup>1</sup></u>
1	AECO	FP	5	May 2012	24 Months	10:30am	11:15am
2	AECO	FP	5	May 2012	36 Months	10:30am	<b>11:15am</b>

**Part B.** Atlantic City Convention and Visitor's Authority (ACCVA), is hereby responding to questions submitted regarding the ITB for Retail Electric Generation Supply Service as follows (ACCVA's responses are highlighted in grey):

1. **Terms and Conditions Section 2.1 – Liability-Copyright.**

a. We believe that this provision is inapplicable to this transaction. Will you delete this provision?

**No**

b. Please clarify whether this provision is addressing: i. the Authority's use of the Bidder's copyrighted material; ii. The Bidder's use of the Authority's copyrighted material, or iii. A third party's use of the Bidder's copyrighted material.

**This provision applies to all or any of the breaches described. It would apply to the Authority's use of Bidder's material if not prohibited by bidder.**

2. **Terms and Conditions Section 2.2 – Liability – Physical.**

a. Please confirm that the word “state” in the second line, should be “Authority.”  
**Yes, the word “state” should be “Authority”.**

b. Please describe the relationship between the Atlantic City Convention Authority, the Atlantic County Improvement Authority, and SMG.  
**Atlantic County Improvement Authority has ownership/bond interest in the Boardwalk Hall.**

c. Who is SMG?  
**SMG is the management agent for the Authority.**

d. Will you agree to limit this section to third party claims?  
**No, it is not limited to third party claims.**

3. **Terms and Conditions Section 3.2 – Delivery Guarantee.** This section is structured for a construction project or the supply of physical materials. It therefore is inapplicable to this agreement. Will you delete this Section?  
**No. It is probably not applicable; however, it will not be removed because it would only apply to deliveries required in the contract and if there are no deliveries, then there should be no exposure to the vendor.**

4. **Terms and Conditions Section 4.2 – Delivery Costs.** This provision refers to deliveries F.O.B. Destination and thus is inapplicable to this agreement. Will you delete this Section?  
**No. See response to question 3.**

5. **Terms and Conditions Section 5.1 – Payment.**

a. Please confirm that by “submission of any invoice” you mean the date of the invoice.  
**No, not the date of the invoice but rather the receipt. Please replace the word “submission” with “receipt”.**

b. Please clarify the requirement for a “properly executed affidavit” as used in this section.  
**The submission of an affidavit to the purchasing department is NOT REQUIRED for payment. Please remove “with a properly executed affidavit to the Purchasing Department”, from paragraph 5.1.**

6. **Technical Specification Section 1**

a. By “boilerplate language,” do you mean the provisions of a signed Electric Supply Service Agreement in the form attached as Appendix B to the Invitation for Bid?  
**No. The Boilerplate language refers to the ACCVA’s Terms and Conditions located on Page ITB-3 – ITB 6.**

b. if there is a discrepancy between the provisions of the Technical Specifications, the Terms and Conditions and the “boilerplate,” which will control?  
**There should be no discrepancies between the Technical Specifications portion of the package and Appendix B; however, if there is a discrepancy between Appendix B and the ACCVA’s boilerplate terms, Appendix B will prevail.**

7. **Technical Specifications Section V.**

a. Please confirm that the Supplier's liability for all Losses relating to the failure to deliver are limited to direct damages only and do not include consequential, exemplary, punitive, incidental, or indirect damages.

**No change. The losses will be whatever a court is willing to award**

b. The Technical Specifications permit Exceptions to the Form of Agreement, yet this Section states that the Bidder "shall not add, delete or change any material provision, section, term or other language contained in the Agreement." Please confirm whether you will consider revising any provisions of the Agreement based upon Exceptions.

**For the winning bidder, proposed contract exceptions may be considered by the ACCVA; however, exceptions that are deemed "material" in nature by the ACCVA will not be accepted. The submittal of proposed contract exceptions will not be cause for automatic rejection of bids.**

8. **Electric Supply Service Agreement ("EESA") – Definitions**

a. In the definition of "Authority's Indemnified Persons," who is SMG, and who are the members of the joint venture?

**See response to Question 2 above. The joint venture reference is to SMG.**

b. The definition of "Consultant Fee" refers to an "agreement between the Supplier and Dome-Tech, Inc." Will you use the Supplier's form of Broker Agreement? If not, please provide the form of Agreement you contemplate using.

**The winning supplier's form of Agreement will be acceptable.**

c. The definition of "Contract Date" is "September \_\_\_, 2012 and the definition of "Commencement Date" is "no more than 45 days after the Contract Date, and yet, Appendix A states that service is to Start in May of 2012. Please clarify the expected dates for each of these definitions and provisions.

**The "Service Start Date", or "Commencement Date", is the day upon which the May 2012 meter read occurs for each account. The "Contract Date" will be on or after the date of the Auction, but no later than the Commencement Date.**

d. The definition of "Force Majeure" erroneously refers to Section 7.16 rather than 7.17. Please revise the agreement to make that correction?

**Correct. It should refer to Section 7.17**

e. The definition of "Termination Date" refers to 2012. Please confirm that you mean a date in 2014 or 2015.

**Correct. It is anticipated that the Termination Date will be in 2014 or 2015.**

9. **EESA – Interpretation:** Confusion is created about the order of precedence among the various portions of the IFB and the Electric Supply Service Agreement. For instance, EESA Section 1.2(E) states that it is the "entire" agreement between the parties. The EESA is defined as being only this Agreement and not including other portions of the IFB. However, Technical Specification Section 1 states: "if there is a conflict or discrepancy between the provisions of the Technical Specifications and the ACCVA's boilerplate", the Technical Specifications will control.

Please confirm that the terms of the EESA will control and be the sole agreement between the parties, given that Section 1.2(E) states “The contract documents, including the IFB, should be read and interpreted so as to carry out the terms of this Agreement.”

**In Section 1.2, the following should be added after the penultimate sentence and after deleting the “. --- ”; provided, however that in the event of a conflict between the Technical Specifications contained in the IFB and this Agreement, the terms of the Technical Specifications contained in the IFB shall control.”**

10. Please confirm that when the words “the State” are used without modification, you mean the State of New Jersey. See Section 1.2(H); Section 2.1(A); and Section 2.2(A).

**Please refer to the 5th recital on first page of Electric Supply Service Agreement. "State" is defined as the State of New Jersey.**

11. **EESA – Metering, Billing and Payment – Section 4.2:**

a. Please clarify the Second paragraph of Section 4.2. Subpart (i) states that the Authority is not responsible for payment for Full Requirements Service and subpart (ii) states that the Authority is responsible for Full Requirements Service.

**Please add the word "not" before "provided" in the second line and in the third line. It is also clarified further in section 3.1**

b. The fourth paragraph of Section 4.2 states that the Authority will mail payment “within the usual payment cycle.”

i. What is the “usual payment cycle”?

ii. Will you agree to pay invoices within 20 days after the Invoice Date?”

iii. If not, will you agree to any fixed date by which invoices must be paid?

**ACCVVA will agree to payment terms of Net 25 days.**

12. **EESA – Alternate Dispute Resolution – Section 5.3** Rather than mediation before the Authority, will you agree to mediation before a neutral mediator?

**No.**

13. **EESA – Term – Section 6.1:** Please provide more clarity regarding what you mean by service commencing on the “appropriate meter read date.”

**Service will commence with each account’s May 2012 meter read date as provided by the utility. The winning supplier is responsible for the timely enrollment of each account. The intent is to ensure a seamless transition from the Authority’s existing contract to the new contract.**

14. **EESA – Termination – Section 6.2:**

a. Will you agree to make the termination rights bilateral so that the Supplier may also terminate the Agreement if the Authority defaults? We suggest bi-lateral events of default include: failure to make any required payment when due, subject to an opportunity to cure; making a material, false, or misleading representation or warranty under this Agreement, and not curing; failing to perform any covenant not excused by Force Majeure if not cured; making an assignment or general arrangement for the benefit of creditors or becoming a party, voluntarily or involuntarily, to an action under bankruptcy or similar laws for the protection of creditors; or becomes bankrupt or insolvent.

**No.**

b. Will you provide for a termination payment payable to the non-defaulting party if the Agreement is terminated?

**No.**

15. **EESA – Indemnification – Section 7.3.** Will you agree to limit the indemnification obligations to third party claims?

**No.**

16. **EESA – Assignment– Section 7.4. and Terms and Conditions Section 3.1 – Subcontracting or Assignment.**

a. Who is the CRDA?

**CRDA is the New Jersey Casino Reinvestment Development Authority, the Authority's controlling parent.**

b. We require the ability to assign our agreements in connection with any financing or other financial arrangements involving the assignment, sale, pledge, or encumbering of this Agreement or its accounts, revenues, or proceeds. Will you consent to that assignment?

**This may be acceptable, but only if in the event of such assignment, the obligations of the supplier shall continue in full force and effect by the supplier.**

17. **EESA – Taxes – Section 7.5.** Please confirm the proper Tax treatment applicable to the Authority. Terms and Conditions Section 4.3 states that the Authority is exempt from Taxes and that Taxes should not be included in price. In contrast, EESA Section 7.5 states that the Contract Price shall include all taxes.

**The ACCVA is not exempt from NJ State sales tax for the purchase of energy.**

18. **EESA – Consumer Lists – Section 7.7:**

a. Please confirm that this provision permitting the Authority to request and receive consumption data applies only to the Authority's own consumption data and that there are no other "consumers" at issue.

**Yes.**

b. Will you agree to limit this to no more than one request per 12 month period?

**No.**

19. **Please advise where Regulatory Change in Law is covered in the contract.** This language is standard today in all retail electricity supply contracts and allows for price adjustments if necessary due to any type of change in law or regulation.

**The following section will be added to the EESA : "SECTION 7.19 REGULATORY CHANGES. The seller may pass through incremental costs associated with material changes to the regulations which impact Seller's costs, with 30 days' written notice provided to the ACCVA. Said notice shall identify the change of cost, but shall not include any profit, markup, or service fees. Any proposed changes must be properly justified and documented with Federal Energy Regulatory Commission documents detailing the new regulatory changes."**

20. **EESA – Force Majeure – Section 7.17:** Please add a provision that obligations to pay for Electricity received are not excused by Force Majeure.

**No.**

21. Please add/delete the following language from the sections referenced below – all changes are highlighted in blue:

### 2.2 Liability – Physical

If it becomes necessary for the vendor, either as principle or by agency or employee, to enter the premises or property of the state for any reason, the vendor hereby covenants and agrees to take use, provide and make proper, all necessary and sufficient precautions, safeguards and protection against the occurrence of happenings of any accidents, injuries, damages or hurt to any person or property during the progress of work herein covered on the premises or property of the Authority and to be responsible for, and indemnify and save harmless the Atlantic City Convention Center Authority, the Atlantic County Improvement Authority, and SMG., along with their officers and employees, from the payment of all sums of money by reason of all or any, such accidents, injuries, damages or hurt that may arise or occur during such work, and all fines, penalties and loss incurred for or by reason of violation of any city ordinance, regulation or the laws of the State of New Jersey or the United States while said work is in progress. Contractor shall carry insurance to indemnify the Atlantic City Convention Center Authority, the Atlantic County Improvement Authority, and SMG, and their officers and employees against any claim for loss, damage or injury to property or persons arising out of the performance by the contractor or his employees and agents of the services covered by the contract and the use, misuse or failure of any equipment used by the contractor or his employees or agents, and shall provide certificates of such insurance to the Authority upon request. Amounts to be in accordance with the attached sample Certificate of Insurance.

**This proposed change is not acceptable.**

### V. General Requirements

The lowest responsible bidder shall supply the ACCVA: (i) evidence of comprehensive commercial general liability insurance or its equivalent of at least \$1,000,000 combined single limit with insurer and, coverage reasonably satisfactory to the ACCVA; (ii) affirmative action compliance documentation; and (iii) a completed IRS W-9 Form.

**This proposed change is not acceptable.**

### Section 7.9 Insurance

Supplier shall secure and maintain, through the term of this Agreement, at its own expense, comprehensive commercial general liability insurance or its equivalent of at least \$2,000,000 combined single limit with insurer and coverage reasonably satisfactory to the Authority, namely the including Authority's Indemnified Persons as additional named insured thereon.

**The ACCVA will not accept the addition of the language "or its equivalent" but will accept the change removing "namely the" and adding the word "including".**

22. B-12, Section 7.7 should be revised to read:

To the extent not prohibited by law, nor by Supplier's internal policy regulations, the Supplier shall, upon request of the Authority, provide such reasonable identifying and aggregate consumption data as the Authority may request at no additional cost to the Authority.

**This proposed change is not acceptable.**

23. B-13, Section 7.10 should be revised to read:

The Authority shall have the right, upon reasonable notice and at reasonable times, to examine the books and records of the Supplier, as specifically related to this Agreement, and to make abstracts

thereof to the extent reasonably necessary to verify the accuracy of any billing statement, payment demand, charge, payment or computation made under this Agreement. Notwithstanding any other provision of this Agreement, the rights conferred by this Section 7.10 shall survive the expiration or earlier termination of this Agreement by a period of one (1) year, **and any abstracts made by the Authority shall be held in the strictest of confidentiality.**

**The authority accepts the first change adding “, as specifically related to this Agreement,” but does not accept the last change “, and any abstracts made by the...”.**

24. Can the winning supplier pass along to the customer increases in transmission costs that occur during the term of the contract?

**The authority is expecting “all-inclusive fixed prices”. The only charges outside of those included in the fixed price offers that may be considered are those that are the result a Regulatory Change that is not in effect at the time that bid prices are received. See response above re: Regulatory Change.**

25. What is the bandwidth associated with the contract?

**BANDWIDTH: With respect to this Transaction, consumption and demand bandwidths will be a minimum of thirty (30%) percent. Suppliers should state if their proposal accounts for any bandwidth greater than 30%. A “material change” shall be defined as any change of +/-30% or more in the monthly usage of each account relative to such account’s historic electricity use and load profile. This change must last for 2 or more billing periods. Changes in usage resulting from normal weather variations shall not be considered a material change.**