

ILLINOIS POWER AGENCY PROCUREMENT EVENTS
Procurement Events under the Brownfield and Utility-Scale Solar RFP

**Invitation to Comment on Requirements related to
Brownfield Site Photovoltaic Projects**

Public Act 99-0906 (the “Future Energy Jobs Bill”) was signed into law on December 7, 2016 and became effective June 1, 2017. Pursuant to this legislation, the Illinois Power Agency (“IPA”) filed its long-term renewable resources procurement plan (“LTRRPP” or “Plan”) on December 4, 2017, which was approved by the Illinois Commerce Commission (“ICC” or “Commission”) with modifications in Docket No. 17-0838 on April 3, 2018. The approved LTRRPP provides for the procurement of RECs from new brownfield site photovoltaic projects.

There will be one Request for Proposals (“RFP”) to procure 2 million RECs delivered annually from new utility-scale solar projects and 80,000 RECs delivered annually from brownfield site photovoltaic projects (the “Brownfield and Utility-Scale Solar RFP”).

NERA Economic Consulting has been retained by the IPA as the Procurement Administrator for the procurement events. **This invitation is to invite interested parties to comment on draft guidelines related to brownfield site photovoltaic projects (the “Draft Brownfield Site PV Guidelines”) appended hereto as Attachment A** and a separate invitation has been issued to seek input from interested parties on the standard contract form to be used under the Brownfield and Utility-Scale Solar RFP.

The Procurement Administrator invites interested parties to submit their comments on the Draft Brownfield Site PV Guidelines. The timeline and process for interested parties to provide comments is as follows:

- Please submit your comments on the Draft Brownfield Site PV Guidelines by email to the Procurement Administrator at: Illinois-RFP@nera.com
- Please provide telephone and email contact information in the event that the Procurement Administrator seeks clarification regarding your comments.
- Comments should be specific, offer proposed substitute language where applicable, and be supported by a well-reasoned accompanying rationale. Comments on these draft guidelines may be submitted by potential bidders as well as other stakeholders with an interest in the IPA’s Brownfield Site Photovoltaic Project procurement event.

The deadline to provide comments is 6 PM Central Prevailing Time (“CPT”) on Tuesday, October 2, 2018.

Please direct any questions regarding this comment process to the “[Ask a Question](#)” page of the procurement website.

ATTACHMENT A
Draft Brownfield Site PV Guidelines

The IPA, through its Procurement Administrator, proposes the following draft guidelines and site requirements specific to Brownfield Site Photovoltaic Projects participating in **Brownfield and Utility-Scale Solar RFP** (the “**Draft Brownfield Site PV Guidelines**”).

BACKGROUND

Section 1-10 of the IPA Act (20 ILCS 3855/1-10) provides as follows:

"Brownfield site photovoltaic project" means photovoltaics that are:

(1) interconnected to an electric utility as defined in this Section, a municipal utility as defined in this Section, a public utility as defined in Section 3-105 of the Public Utilities Act, or an electric cooperative, as defined in Section 3-119 of the Public Utilities Act; and

(2) located at a site that is regulated by any of the following entities under the following programs:

- (A) the United States Environmental Protection Agency under the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended;
- (B) the United States Environmental Protection Agency under the Corrective Action Program of the federal Resource Conservation and Recovery Act, as amended;
- (C) the Illinois Environmental Protection Agency under the Illinois Site Remediation Program; or
- (D) the Illinois Environmental Protection Agency under the Illinois Solid Waste Program.

Section 1-5(8) of the IPA Act also provides that “Developing brownfield solar projects in Illinois will help return blighted or contaminated land to productive use while enhancing public health and the well-being of Illinois residents.” (20 ILCS 3855/1-5(8)).

The IPA proposed conducting this Brownfield Site Photovoltaic Project procurement event through its Long-Term Renewable Resources Procurement Plan, which was approved by the ICC in Docket No. 17-0838 on April 3, 2018. The ICC’s Final Order approving the Plan adopted a proposal offered by the Environmental Law & Policy Center (“ELPC”) for additional requirements applicable to **Illinois Site Remediation Program** projects:¹

¹ As taken from ELPC’s Objections in that proceeding, the rationale supporting additional requirements for Illinois Site Remediation Project sites is that “sites can be enrolled in the program before the extent of contamination is known and, in some rare cases, may enroll in the program even when there are no contamination issues, either because of an incorrect perception of contamination issues or to legally establish the absence of contamination issues for a lender or other party that requires a no further remediation letter before agreeing to a property transfer.” (Docket No. 17-0838, Final Order dated April 3, 2018 at 48).

**Fall 2018 Procurement Events (Brownfield and Utility-Scale Solar RFP)
17 Sep 2018**

The IPA Act defines brownfield site PV projects as PV projects that are interconnected to an Illinois investor owned utility, cooperative, or municipal utility and regulated under any of four IEPA brownfield programs. 20 ILCS 3855/1-10. The Commission finds the statutory definition to be clear and agrees with the IPA that an alternate definition should not be adopted. There is no reason, however, that the IPA should not use stricter criteria for brownfield site project eligibility. Indeed, the parties appear to agree in principle. ELPC in its Reply accepts the IPA's proposed solution with a minor modification. ELPC's final recommendation to require guidelines **to ensure projects currently feature or featured actual blight or contamination prior to remediation** seems reasonable. The Commission adopts this recommendation because it will ensure that the statutory intent to utilize blighted or contaminated land sites for solar development is reflected in the Plan.

(Docket No. 17-0838, Final Order dated April 3, 2018 at 50, emphasis added). As ELPC's proposal related only to the Illinois Site Remediation Program, this additional demonstration is required only for sites regulated under that program.

Through these draft guidelines, the IPA seeks to provide guidance on the following issues:

- 1) What document(s) must a potential bidder submit to the Procurement Administrator with its Part 1 Proposal to demonstrate that the proposed site is "regulated by" the U.S. EPA or Illinois EPA under one of the four (4) programs found in Section 1-10's definition of a brownfield site photovoltaic project provided above?
- 2) How recent must this demonstration of state or federal brownfield site regulation be?
- 3) For sites regulated by the Illinois EPA under the Illinois Site Remediation Program, what additional demonstration that the site "currently feature[s] or featured actual blight or contamination prior to remediation" is required?

To answer these question, the IPA proposes the draft guidelines and requirements discussed below. **All aspects of the below guidelines are subject to comments by interested parties.**

PROPOSED GUIDELINES AND REQUIREMENTS

To demonstrate that a bidder's site is "regulated by" the U.S. EPA under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA") or the Resource Conservation and Recovery Act ("RCRA") Corrective Action Program, or the Illinois EPA under the Site Remediation Program or a Solid Waste Program, a bidder should submit the following:

- 1) Under CERCLA, a bidder may submit a site assessment, remedy decision, cleanup plan, or similar document.
- 2) For the RCRA Corrective Action Program (hazardous waste), a bidder may submit a demonstration of corrective action being required by U.S. EPA (such as a permit application, administrative order, court order, etc.).
- 3) For Illinois Solid Waste Programs, the site must be a site for which the Illinois EPA has issued a solid waste permit, and that permit may serve as proof of regulation.

Fall 2018 Procurement Events (Brownfield and Utility-Scale Solar RFP)
17 Sep 2018

- 4) For the Illinois Site Remediation Program, a Site Investigation Report, Remedial Action Plan, Completion Report, or No Further Remediation Letter.

The Procurement Administrator may consider other forms of documentation provided by the bidder to demonstrate regulation under the above programs if appropriate. The IPA proposes that any documentation issued by or filed with the relevant authority must be dated no earlier than 15 years prior to the Bid Date. The Procurement Administrator may also cross-reference supporting materials with public brownfield site databases, including the U.S. EPA’s RE-Powering Screening Database or the U.S. EPA’s CERCLA Corrective Action Baseline Database.

With respect only to sites regulated by the Illinois EPA under the Site Remediation Program, the site must also demonstrate “actual blight or contamination” consistent with the Commission’s Order in Docket No. 17-0838. To show that the site currently features or previously featured actual blight or contamination prior to remediation, the bidder may submit any of the following four forms of proof:

- 1) Demonstration of the site’s regulation under another one of the programs referenced in Section 1-10 of the IPA Act (if participation in multiple programs is indeed allowable);
- 2) Evidence of contamination or remediation through the Illinois Site Remediation Program documentation (for avoidance of doubt, the IPA is proposing for all four items (a)-(d) listed below to be provided to satisfy this requirement):
 - a. Remedial action plan demonstrating concentrations of contaminants at the site exceed the remediation objectives established for the site, requiring remediation activities;
 - b. Remedial action plan completion report demonstrating that remediation was indeed conducted at the site to meet those objectives;
 - c. Non-simultaneous submittal of items (a) and (b) above; and
 - d. The attainment of or demonstrated progress toward a comprehensive “No Further Remediation” letter from the Illinois EPA (i.e., covering the entirety of the site, and not only a “focused” No Further Remediation letter);
- 3) Recognition of contamination by the federal government through the site’s listing on the U.S. EPA’s RE-Powering America’s Land Initiative (but not if listed due to regulation under the Site Remediation Program – which may be confused with the Site Response Program in the database); or
- 4) Demonstration of contamination at a site through a U.S. EPA Targeted Brownfields Assessment site assessment and determination of the need for remediation activities.