

**Illinois Power Agency**  
**2017/18 Procurement Events**  
**Zero Emission Credits**  
**Request for Proposals**  
**Process and Rules**

06 November 2017

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## **ARTICLE I. Introduction**

### **I.1. Background**

- I.1.1. Public Act 99-0906, which was signed into law on December 7, 2016 and became effective June 1, 2017 (the “Act”), establishes a Zero Emission Standard, which assures the State’s reliance on zero emission energy through the procurement of Zero Emission Credits from Zero Emission Facilities. A “Zero Emission Facility” means a facility that: (1) is fueled by nuclear power; and (2) is interconnected with PJM Interconnection, LLC (“PJM”) or the Midcontinent Independent System (“MISO”). A Zero Emission Credit or “ZEC” is a tradable credit that represents the environmental attributes of one megawatt hour of energy produced from a Zero Emission Facility.
- I.1.2. Pursuant to the Act, the Illinois Power Agency (“IPA”) filed a Zero Emission Standard Procurement Plan (“ZES Procurement Plan”) with the Illinois Commerce Commission (“ICC” or “Commission”). The ICC issued an Order on September 11, 2017 approving the IPA’s ZES Procurement Plan. For purposes of this document the “ZES Procurement Plan” means the ZES Procurement Plan as amended by this ICC Order.
- I.1.3. The ZES Procurement Plan specifies the design and implementation parameters for a procurement of ZECs for Ameren Illinois Company (“AIC”), Commonwealth Edison Company (“ComEd”), and MidAmerican Energy Company (“MEC”). Each of AIC, ComEd, and MEC is referred to as a “Company”. Winning suppliers will provide ZECs to all Companies through a ten-year ZEC delivery contract.
- I.1.4. The present document, in conjunction with all its appendices described in more detail in Section I.5, constitutes the Request for Proposals (“RFP”) to solicit Proposals from suppliers in this procurement event. This RFP is referred to as the “ZEC RFP”. The present document alone is referred to as the “RFP Rules”. The RFP Rules detail the requirements for the Proposals.

- I.1.5. The IPA has retained NERA Economic Consulting (“NERA”) as the Procurement Administrator for the procurement event. The ICC has retained Bates White, LLC as the Procurement Monitor. The Procurement Monitor will report and monitor the progress of the procurement event for the ICC.
- I.1.6. Capitalized terms in this document are defined explicitly herein unless explicit reference is made to another document.

## **I.2. Eligibility and Contents of Proposal**

- I.2.1. Participation in the ZEC RFP is limited to those parties that have previously provided to the IPA the eligibility information required under Section 1-75(d-5)1(A) of the IPA Act in response to the IPA’s information request dated September 11, 2017 and that have received a confirmation of bidder eligibility from the IPA.
- I.2.2. Any such party may submit a “Proposal”, which is a response to this ZEC RFP for one or more Zero Emission Facilities. For a multi-reactor site, each generating unit is considered a separate Zero Emission Facility. An entity that presents a response to this ZEC RFP is a “Bidder”. A Bidder may present multiple Zero Emission Facilities in its Proposal.
- I.2.3. A Bidder that has not paid a Bid Participation Fee pursuant to its participation in a prior 2017 procurement event is required to pay a non-refundable Bid Participation Fee with the submission of the Proposal. The Proposal will also include contact information for representatives of the Bidder, information on the delivery node of the Zero Emissions Facilities, certifications regarding the accuracy of the information provided, certifications regarding the agreement with the terms of this ZEC RFP and the supplier contract, as well as submission of a bid form and of financial guarantees. The requirements of the Proposal are described in more detail in Article III.

### **I.3. Submission of Proposals**

- I.3.1. Except if instructed otherwise by the Procurement Administrator, Bidders submit information and required documents for their Proposal by email to [Illinois-RFP@nera.com](mailto:Illinois-RFP@nera.com). Bidders may also request to submit any portion of this information or the required documents to the Procurement Administrator via Secure File Transfer (“SFT”). Bidders that request to submit information or documents via SFT will be invited to use the system and will receive additional instructions for accessing the system and submitting files. Bidders will be required to fill out a form in Microsoft Word format and may be required to provide attachments to the Proposal Form that will be available separately from the Procurement Administrator.
- I.3.2. The “Proposal Window” opens on November 14, 2017 and closes at 12 PM (noon) on the “Proposal Due Date”, which is December 12, 2017. Materials for the Proposal, including an executed Pre-Bid Letter of Credit but excluding the acceptance of the terms of the ZEC Contract and excluding the Bid Form, must be submitted by the Proposal Due Date. The Materials required by the Proposal Due Date are fully explained in Article III. The acceptance of the terms of the ZEC Contract is due no later than four (4) business days prior to the Bid Date. The Bid Forms are due on the Bid Date of January 10, 2018. All information and all certifications must remain valid until fifteen (15) business days after the Bid Date. All Proposals must comply with the more detailed requirements of Article IV.
- I.3.3. Within five (5) business days of the Bid Date, the Procurement Administrator submits to the ICC a confidential report that will provide the results of the procurement event, a recommendation on whether these results should be accepted, as well as information that would be included in the ICC’s public notice should the ICC approve the results of the procurement event. Within five (5) business days of the Bid Date, the Procurement Monitor also submits to the ICC a confidential report regarding the results of the procurement event and a recommendation on whether these results should be accepted. The ICC is expected to decide

whether to accept the results of the procurement event within five (5) business days of receiving the confidential reports from both the Procurement Administrator and the Procurement Monitor.

- I.3.4. If the ICC approves the results of the procurement event, a Bidder with Zero Emission Facilities selected through this ZEC RFP will execute the ZEC Contract for each such Zero Emission Facility with each of the Companies within three (3) business days of the ICC decision.
- I.3.5. A Bidder with a Zero Emission Facility selected through this ZEC RFP will be assessed a Supplier Fee that reflects the cost of conducting the procurement event less the total of the Bid Participation Fees. The exact amount of the Supplier Fee will be announced no later than two (2) business days before the Bid Date. Payment of the Supplier Fees to the IPA by the Bidder will be due within seven (7) business days after ICC approval of the Zero Emission Facilities selected through this ZEC RFP.

#### **I.4. Evaluation**

- I.4.1. Zero Emission Facilities are selected in this ZEC RFP based on public interest criteria of minimizing carbon dioxide emissions that result from electricity consumed in Illinois and minimizing sulfur dioxide, nitrogen oxide, and particulate matter emissions that adversely affect the citizens of Illinois<sup>1</sup>, as specified in the Act. These public interest criteria are used to develop a score for each Zero Emission Facility for which a Proposal is presented through this ZEC RFP.
- I.4.2. The evaluation criteria are further explained in the ZES Procurement Plan ([https://www.illinois.gov/sites/ipa/Pages/current\\_approved\\_plan.aspx](https://www.illinois.gov/sites/ipa/Pages/current_approved_plan.aspx)) and in Appendix E “Bid Evaluation Form” (<https://www.illinois.gov/sites/ipa/Pages/2018-Appendices.aspx>).
- I.4.3. The Zero Emission Facilities with the highest scores are selected through this ZEC RFP until the annual target of ZECs is reached. The annual target of ZECs is 20,11~~4~~8,672 ZECs

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<sup>1</sup> If Zero Emission Facilities ceased operating, the electricity generated by these facilities in PJM and MISO generally would be replaced primarily by electricity generated from coal and natural gas generation that would emit certain pollutants. Thus, the Act recognizes environmental benefits to the continued operation of Zero Emission Facilities.

(5,903,583 ZECs for AIC, 14,172,903 ZECs for ComEd, and 42,186 ZECs for MEC). A Zero Emission Facility may only be selected for an award if at least 50% of the Zero Emission Facility's credits can be used to meet the annual target.

## **I.5. Seller Obligations**

- I.5.1. The supplier contract for this ZEC RFP is referred to as the Zero Emission Credit Agreement (or the "ZEC Contract"). The ZEC Contract fully specifies the obligations of a Bidder with a Zero Emission Facility selected through this ZEC RFP and approved by the Commission. Such a Bidder becomes a Seller under the ZEC Contract.
- I.5.2. As noted in the schedule for this ZEC RFP provided in Table II-1, at the time when this ZEC RFP is released, the ZEC Contract has been posted to the procurement website in draft form for comments by the parties.
- I.5.3. Once the ZEC Contract is released in final form by the Procurement Administrator, a Bidder will be required to accept the terms of the ZEC Contract as a condition of further participation in this ZEC RFP.

## **I.6. Summary of RFP Documents**

- I.6.1. The following documents are appended to the RFP Rules, and shall be considered an integral part of this ZEC RFP:

- Appendix 1: Final ZEC Contract (when it becomes available)
- Appendix 2: Illustrative Proposal Form
- Appendix 3: Pre-Bid Letter of Credit for AIC
- Appendix 4: Pre-Bid Letter of Credit for ComEd
- Appendix 5: Pre-Bid Letter of Credit for MEC
- Appendix 6: Confidentiality Statement

## ARTICLE II. Information and Schedule

### II.1. Procurement Website

II.1.1. The Procurement Administrator has established a procurement website that is the main source of information for this ZEC RFP. Bidders and other stakeholders can visit this procurement website to obtain information and documents related to the procurement events. The procurement website address is [www.IPA-energyrfp.com](http://www.IPA-energyrfp.com).

II.1.2. More generally, the procurement website contains the sections described below. New sections may be added as necessary to assist Bidders.

Home: This section provides recent announcements and a brief description of the purpose of the website.

Announcements: This section provides announcements such as reminders about deadlines and posting of documents.

Fall Block Energy and Capacity: This section provides documents related to the Fall procurement of block energy for the AIC, ComEd, and MEC portfolios and of capacity for the AIC portfolio.

Fall Utility DG: This section provides documents related to the Fall procurement of RECs from distributed generation for the AIC and ComEd portfolios.

Wind and Solar: This section provides documents for the procurement of RECs from utility-scale solar Projects, utility-scale wind Projects, and brownfield site photovoltaic Projects.

Zero Emissions Credits: This section provides documents for the procurement of Zero Emissions Credits from zero emission facilities for AIC, ComEd and MEC.

Calendar: This section provides a schedule for the most current procurement events.

FAQs: The Procurement Administrator answers questions from interested parties via email. The question and answer are posted in this section so that all interested parties have access to the

same information. Aspects of the question and/or answer that might identify the questioner are removed before posting to the extent practicable.

Contact Us: This section gives an opportunity for interested parties to register their email address to receive announcements regarding the procurement events and to ask questions of the Procurement Administrator.

Previous RFPs: The Procurement Administrator provides in this section links to information from previous RFPs.

## **II.2. RFP Schedule**

II.2.1. A schedule for this ZEC RFP is provided in Table II-1. Any updates will be provided on the procurement website [www.IPA-energyrfp.com](http://www.IPA-energyrfp.com).

II.2.2. Specific times for submission of materials are provided elsewhere in this ZEC RFP. All such times are Central Prevailing Time unless specifically noted. The close of the business day will be 6 PM for purposes of processing Proposals. Unless otherwise specified, any reference to “day” shall mean a business day.

**Table II-1. Calendar.**

<b>Event</b>	<b>Date</b>
Zero Emission Standard Procurement Plan is filed with the ICC	Monday, July 31, 2017
ICC issues Order approving the Zero Emission Standard Procurement Plan	Monday, September 11, 2017
Bidder Eligibility Form is available	Monday, September 11, 2017
Bidder Eligibility Form is due	Monday, September 25, 2017
IPA finishes review of Eligibility Information	Monday, October 09, 2017
Bidder Eligibility deficiency notices sent	Tuesday, October 10, 2017
Eligibility Information cure deficiency period begins	Tuesday, October 10, 2017

**2017/18 Procurement Events (ZEC RFP)**  
**06 NOV 2017**

<b>Event</b>	<b>Date</b>
End of Eligibility Information cure deficiency period	Monday, October 23, 2017
Confirmation of Bidder Eligibility is sent	Friday, October 27, 2017
Draft supplier contract is posted	Friday, October 27, 2017
Comment process for draft supplier contract begins	Friday, October 27, 2017
RFP issued	Monday, November 06, 2017
Deadline to submit comments on draft supplier contract	Friday, November 10, 2017
Opening of Proposal Window	Tuesday, November 14, 2017
Supplier contract posted in final form	Wednesday, November 29, 2017
Comments on Pre-Bid Letters of Credit are due	Tuesday, December 05, 2017
Proposals Due Date (Proposals are due, except Bid Form and Acceptance of Contract)	Tuesday, December 12, 2017
Acceptance of Contract is due	Thursday, January 04, 2018
Confirmation of eligibility to submit bid form	Monday, January 08, 2018
Bid Date (Bid Forms are Due)	Wednesday, January 10, 2018
Procurement Administrator submits confidential report on results of procurement event	Thursday, January 18, 2018
ICC renders decision on results of procurement event	Thursday, January 25, 2018
Contracts fully executed	Tuesday, January 30, 2018

## **ARTICLE III. Proposal Requirements**

Participation in the ZEC RFP is limited to those parties that have previously provided to the IPA the eligibility information required under Section 1-75(d-5)1(A) of the IPA Act (“Act”) in response to the IPA’s information request dated September 11, 2017 and that have received a confirmation of bidder eligibility from the IPA. Such a party may submit a Proposal under this ZEC RFP and is then called a “Bidder”. The Procurement Administrator sends the Proposal Form to such Bidder.

A Bidder submits a single Proposal in which it may submit to the requirements of the ZEC RFP for one Zero Emission Facility or for multiple Zero Emission Facilities. A Zero Emission Facility must be fueled by nuclear power and must be interconnected to PJM or MISO. The Bidder must be the entity that would be the signatory to the ZEC Contract if the Proposal is successful. The Procurement Administrator evaluates the Bid Form submitted in accordance with this ZEC RFP for each Bidder that fulfills all the requirements of the Proposal by 12 PM (noon) on the Bid Date.

Various components of the Proposal are due at different times. The Bid Form is due between 10 AM and 12 PM (noon) on the Bid Date of January 10, 2018. The acceptance of the terms of the ZEC Contract is due from a Bidder by 12 PM (noon) on January 04, 2018. All other components, including submission of the Proposal Form and the executed Pre-Bid Letter of Credit, must be submitted by 12 PM (noon) on December 12, 2017, which is the Proposal Due Date.

### **III.1. General Information About the Bidder and the Zero Emission Facilities**

III.1.1. Identity and Address for the Bidder. The “Bidder” is the entity submitting the Proposal and the entity that would be the signatory to the ZEC Contract if the Proposal is successful. The Proposal must identify the Bidder’s legal name and address (including street address, city, state, and zip code).

III.1.2. Officer of the Bidder. A Bidder must provide the name, title, and full contact information (address, phone number(s), and email address) of the Officer of the Bidder. The Officer of the

Bidder must be an officer, a director or an individual otherwise empowered to undertake contracts and bind the Bidder. The Officer of the Bidder whose contact information is provided in the Proposal must make all representations required in the Proposal. It is expected that, if a Bidder has Zero Emission Facilities selected through the ZEC RFP and approved by the Commission, the Officer of the Bidder would sign the applicable supplier contract. Should the Officer of the Bidder not be available to sign for this purpose, the Bidder will advise each Company of this fact. The Bidder will name another individual to sign and the Bidder will confirm that this individual is empowered to undertake contracts and bind the Bidder.

- III.1.3. Representatives. The Bidder must identify the individual or individuals responsible for submission of the Proposal and provide full contact information for each individual, including address, phone number(s), and email address. These individuals, each a “Representative”, must be authorized to act on behalf of the Bidder. The Procurement Administrator sends all correspondence related to the procurement event to the Representatives, including information required to submit the Bid Form on the Bid Date. The Proposal Form requires naming one (1) Representative and the Bidder may name up to three (3) additional Representatives.
- III.1.4. Zero Emission Facilities. The Bidder must provide the unit name and delivery node for each Zero Emission Facility presented as part of the Proposal.
- III.1.5. Agency Agreement. A Bidder that is operating under an Agency Agreement may be subject to additional requirements. The Bidder must indicate in the Proposal Form that the Bidder is operating under an Agency Agreement. Such additional requirements will be provided to the Bidder, should they apply, in a separate notice.
- III.1.6. Information required in this Section III.1 must be provided exclusively by completing Section 1 of the Proposal Form and by providing the Proposal Form by the Proposal Due Date, as further explained in Article IV.

### **III.2. Bid Participation Fee**

- III.2.1. The requirements of this section apply only to a Bidder that has not paid a Bid Participation Fee pursuant to participation in a prior 2017 procurement event and that submits a Proposal.
- III.2.2. Such Bidder is required to pay a non-refundable Bid Participation Fee of \$500. The Bid Participation Fee will be used to cover part of the costs of the procurement event. A Bidder that has paid the Bid Participation Fee will not be reimbursed, even if all Zero Emission Facilities presented by the Bidder fail to meet the requirements of the Proposal or if the Bidder decides not to continue its participation in the ZEC RFP. (The Supplier Fees, which are levied only on Bidders with Zero Emission Facilities selected through the ZEC RFP and approved by the Commission, are also used to cover part of the costs of the procurement event.)
- III.2.3. Such Bidder must pay the Bid Participation Fee to the IPA as a condition of the Bidder fulfilling the requirements of the Proposal. Such Bidder can pay: (i) by e-check through <https://www.epayillinois.com>; or (ii) by check payable to “Illinois Power Agency”. Instructions for submission of the Bid Participation Fee are available from the Procurement Administrator upon request.
- III.2.4. The Bid Participation Fee is due by the Proposal Due Date and such Bidder must provide evidence of compliance with this requirement with its Proposal. Such evidence includes a photocopy of the check, a confirmation page from the e-check website, or a receipt from the IPA. Such evidence is provided by email or by SFT. Notwithstanding whether a Bidder has provided such evidence, the Proposal remains deficient until the Procurement Administrator is able to get confirmation from the IPA that the IPA has received payment of the Bid Participation Fee from the Bidder.
- III.2.5. Information required in this Section III.2 must be provided exclusively by completing Section 2 of the Proposal Form and by providing the Proposal Form by the Proposal Due Date, as further explained in Article IV.

### III.3. Representations

III.3.1. Representations Required. The Officer of the Bidder must make the following representations:

- The Bidder as identified in the Proposal is the entity that will sign the ZEC Contract for a given Zero Emission Facility with each of the Companies if the Zero Emission Facility is selected through the ZEC RFP and approved by the Illinois Commerce Commission;
- Each facility presented in the Proposal is a Zero Emission Facility as defined in the Act;
- All information related to each Zero Emission Facility presented in the Proposal and in the Bidder Eligibility Form submitted to the IPA, as such information may have been amended or supplemented in response to a request for information by the IPA, is or remains accurate and up-to-date;
- The Bidder accepts all the terms and conditions of these RFP Rules, regardless of the outcome of the ZEC RFP or the outcome of the Proposal; and
- All information provided in the Proposal is true and accurate to the best of the Officer's knowledge and belief. If, for any reason and due to any circumstance, any information provided in the Proposal changes or any previous certification fails to remain valid before the Bid Date, the Bidder will notify the Procurement Administrator of such change as soon as practicable, and failing to do so may result in disqualification of the Bidder.

The signature of the Officer of the Bidder must be notarized or attested with the corporate seal.

A Bidder that tries to unduly influence in any way the evaluation process may be disqualified by the Procurement Administrator.

III.3.2. Confidentiality. The Officer of the Bidder must also make the following representations regarding the confidentiality of the Proposal. As a necessary part of preparing the Proposal, the Bidder may communicate with a financial institution for purposes of arranging the payment of collateral and may communicate with advisors. The Officer of the Bidder must certify that:

- The Bidder has taken all necessary care to uphold the confidentiality of its Proposal in its communications with a financial institution for the purpose of arranging payment of the collateral, or in its communications with advisors, if any;
- With the exceptions of communications with a financial institution for the purpose of arranging payment of the collateral, or advisors (if any), the Bidder has not disclosed, and will otherwise not disclose, publicly or to any other party any information relating to its Proposal, which could have an effect on whether another party submits a Proposal for this procurement event, or on the contents of such Proposal that another Bidder would be willing to submit. This certification must hold until the ICC has rendered its decision on the results of the procurement event.

A Bidder that cannot make all of these certifications but that fully justifies its inability to do so fulfills this requirement. The signature of the Officer of the Bidder on the certifications made or on any explanations provided must be notarized or attested with the corporate seal.

III.3.3. Information required in this Section III.3 must be provided exclusively by completing Section 3 of the Proposal Form and by providing the Proposal Form by the Proposal Due Date, as further explained in Article IV.

#### **III.4. Credit Instruments (Including the Pre-Bid Letter of Credit)**

III.4.1. Credit Instruments from the ZEC Contract. At the time when this ZEC RFP is released, the ZEC Contract has been posted to the procurement website in draft form for comments by the parties. To the extent that a Bidder has not already provided comments to the letter of credit for a Company or to the standard Form of Guaranty for a Company appended to the ZEC Contract during that comment process, a Bidder may submit comments to these credit instruments during the Proposal Window. A Bidder may:

- Submit comments or propose modifications to the standard Irrevocable Standby Letter of Credit for a Company that may be used to post security under the terms of the ZEC

Contract and that is provided as Exhibit C of the ZEC Contract (the “Post-Bid Letter of Credit”). Any one of a Bidder’s comments or proposed modifications to the Post-Bid Letter of Credit may result in an addition to the list of modifications to the Post-Bid Letter of Credit approved by the Company for use by all Bidders on an optional basis. The Bidder provides comments and proposes modifications exclusively by submitting a redline of the Post-Bid Letter of Credit in Microsoft Word format. A document that is not substantially in the form of the standard letter of credit for a Company will not be evaluated. This document is provided by email to the Procurement Administrator.

- Submit comments or propose modifications to the standard Form of Guaranty drawn for the benefit of a Company and that is provided as Exhibit B of the ZEC Contract. Any one of a Bidder’s comments or proposed modifications to the Form of Guaranty may result in an addition to the list of modifications to the Form of Guaranty approved by the Company for use by all Bidders on an optional basis. The Bidder provides comments and proposes modifications exclusively by submitting a redline of the Form of Guaranty in Microsoft Word format. A document that is not substantially in the form of the standard letter of credit for a Company will not be evaluated. This document is provided by email to the Procurement Administrator.

III.4.2. Pre-Bid Letter of Credit. A Bidder must provide an executed Pre-Bid Letter of Credit to each Company, drawn for the account of the Bidder.

- Regardless of the number of Zero Emission Facilities presented in the Proposal, the required amounts of the Pre-Bid Letter of Credit for each Company is as follows: \$400,000 for ComEd; \$150,000 for AIC; and \$50,000 for MEC.
- The original of the executed Pre-Bid Letter of Credit must be sent via overnight delivery service to each Company according to the instructions provided by the Procurement Administrator.

- In submitting a Pre-Bid Letter of Credit for a Company, the Bidder must either use the Standard Pre-Bid Letter of Credit for that Company as provided in an appendix to these RFP Rules or the Bidder must submit a Pre-Bid Letter of Credit that incorporates only those modifications to the Standard Pre-Bid Letter of Credit approved by that Company and posted to the procurement website.
- Payment under the Pre-Bid Letter of Credit can be demanded by the Company if the Bidder: (i) has made a material omission or misrepresentation in the Proposal submitted in connection with the procurement event; (ii) has failed to execute the applicable supplier contract within three (3) business days of being notified that a Zero Emission Facility presented by the Bidder was selected through the ZEC RFP and approved by the Illinois Commerce Commission; or (iii) has failed to pay the applicable Supplier Fee to the Illinois Power Agency within seven (7) business days of being notified that a Zero Emission Facility presented by the Bidder was selected through the ZEC RFP and approved by the Illinois Commerce Commission.
- The Pre-Bid Letter of Credit must expire no earlier than fourteen (14) business days after the anticipated date of the Commission decision on the procurement event. The anticipated date of the Commission decision is the date of the Commission decision provided in the calendar for the procurement event and posted to the procurement website.
- A Bidder may provide special instructions for the return of the Pre-Bid Letter of Credit in its Proposal.

III.4.3. Comments on the Pre-Bid Letters of Credit. No later than 12 PM (noon) on December 05, 2017, a Bidder may provide comments on or propose modifications to the Standard Pre-Bid Letter of Credit for that Company. Any one of a Bidder's comments or proposed modifications may result in an addition to the list of modifications to the Standard Pre-Bid Letter of Credit

approved by the Company for use by all Bidders on an optional basis. The Bidder provides comments and proposes modifications exclusively by submitting a redline of the Post-Bid Letter of Credit in Microsoft Word format. A document that is not substantially in the form of the standard letter of credit for a Company will not be evaluated. This document is provided by email to the Procurement Administrator.

III.4.4. Information required in this Section III.4 must be provided exclusively by completing Section 4 of the Proposal Form and by providing the Proposal Form by the Proposal Due Date, as further explained in Article IV.

### **III.5. ZEC Contracts**

III.5.1. General. When this ZEC RFP is released, the ZEC Contract remains in draft form and parties still have an opportunity to submit comments on its terms.

III.5.2. Information to Prepare the ZEC Contracts. A Bidder is required to provide information to the Procurement Administrator so that each of the Companies can prepare the ZEC Contracts should the Bidder have a Zero Emission Facility selected through this ZEC RFP and approved by the Commission. A Bidder that intends to use a Guarantor is also asked to provide all information necessary for ComEd to prepare the Guaranty. The ZEC Contract is prepared by each of the Companies after the Procurement Administrator notifies the Bidder that the Zero Emission Facility has been selected through the ZEC RFP. A Bidder provides this information by providing the fully completed Contract Attachment prepared for this purpose and available on the procurement website. The Contract Attachment is labeled Attachment #1. A Bidder provides the Contract Attachment in Microsoft Word format by email or by SFT. A Contract Attachment in pdf format will not be accepted.

III.5.3. Acceptance of the terms of the ZEC Contract. Once the ZEC Contract has been issued in final form and the Procurement Administrator has announced the posting of such documents to the procurement website, a Bidder must, at that time, accept the terms of such ZEC Contract as a

condition of further participation in the procurement event. The Procurement Administrator will send to each Bidder an Acceptance Attachment and the Officer of the Bidder must use this Attachment to accept the terms of the ZEC Contract. The Acceptance Attachment is labeled Attachment #2. A Bidder provides the Acceptance Attachment by email or by SFT.

III.5.4. Information required by this Section III.5 must be provided exclusively by (i) completing Attachment #1 and providing such document by the Proposal Due Date; and (ii) completing Attachment #2 and providing such document by January 04, 2018, as instructed in Section 5 in the Proposal Form and as further explained in Article IV.

### **III.6. Bid Forms**

III.6.1. General. By January 08, 2018, the Procurement Administrator will send a Bid Form to each Bidder that is eligible to submit a Bid Form pursuant to such Bidder having successfully provided all other components of the Proposal and having satisfied all requirements in respect to such components. The Bid Form must be submitted by the Bidder according to the instructions provided by the Procurement Administrator between 10 AM and 12 PM (noon) on the Bid Date of January 10, 2018.

III.6.2. Completion of the Bid Form. The Bid Form will require the Bidder to provide contact information for a representative of the Bidder. The Bid Form will also require the Bidder to acknowledge and certify to the following:

- All information related to each Zero Emission Facility presented in the Proposal and in the Bidder Eligibility Form submitted to the IPA, as such information may have been amended or supplemented in response to a request for information by the IPA, is or remains accurate and up-to-date, and will remain so until fifteen (15) business days after the Bid Date;
- The Bidder agrees that, if a Zero Emission Facility presented by the Bidder is selected through the ZEC RFP and is approved by the Commission, the Bidder will execute the ZEC Contracts with the Companies as instructed by the Procurement Administrator and the Bidder

will submit any necessary supporting documentation (if applicable) in the timeframes required by the ZEC Contract;

- The Bidder acknowledges that Supplier Fees, in the amount specified by the IPA, must be paid by the Bidder if a Zero Emission Facility presented by the Bidder is selected through the ZEC RFP and is approved by the Commission; and
- The Bidder has no pending or, to its knowledge, threatened litigation, arbitration or administrative proceeding before any Governmental Authority or any arbitrator that is likely to materially adversely affect its ability to perform its obligations under the ZEC Contract.

The Officer of the Bidder must sign the Bid Form that includes these acknowledgments and certifications. A Bidder must fill out all required information on a Bid Form according to the instructions provided by the Procurement Administrator.

III.6.3. Submission of the Bid Form. A Bidder must submit a Bid Form to the Procurement Administrator via email or through a SFT interface according to the instructions provided by the Procurement Administrator. A Bid Form must be received between 10 AM and 12 PM (noon) on the Bid Date of January 10, 2018. No late Bid Forms will be accepted. The Bidder must phone the Procurement Administrator to advise the Procurement Administrator of the transmission of its Bid Form. If the Bid Form was not received within 15 minutes of such communication by the Bidder, the Procurement Administrator will provide instructions for submission of the Bid Form by an alternative method. If the Bid Form is received, the Procurement Administrator will acknowledge receipt of the Bid Form and provide the assessment of the Bid Form. If the Bid Form was received and the Bid Form was deficient, the Bidder may resubmit the Bid Form as long as such Bid Form is received during the Bid Window.

## **ARTICLE IV. Process**

### **IV.1. Proposals: Submission and Processing**

- IV.1.1. Any notification or other written communication from the Procurement Administrator to a Bidder will be sent to the email addresses provided for the Representatives. Any such notification or communication will be deemed received by the Bidder at the time of delivery or transmission, provided that when delivery or transmission occurs after 6 PM on a business day or occurs on a day that is not a business day, receipt will be deemed to occur at 9 AM on the following business day. All times in this ZEC RFP are Central Prevailing Times unless specifically noted. Any email from the Bidder to the Procurement Administrator should be addressed to Illinois-RFP@nera.com to ensure a prompt reply.
- IV.1.2. Any document or other information prepared and sent by the Procurement Administrator to a Bidder for its continued participation in the ZEC RFP is sent through a SFT interface to the Representatives. Any such document or other information will be deemed received by the Bidder at the time of delivery or transmission, provided that when delivery or transmission occurs after 6 PM on a business day or occurs on a day that is not a business day, receipt will be deemed to occur at 9 AM on the following business day.
- IV.1.3. The exclusive method of responding to the Proposal requirements is the use of the Proposal Form together with the use of Attachments available as separate forms from the Procurement Administrator. The Bid Participation Fee must be paid to the IPA according to the instructions provided for this purpose. Documents (supporting documents and Attachments) must be sent to the Procurement Administrator via email or SFT.
- IV.1.4. Responses to the requirements of these RFP Rules that do not use the Proposal Form and the Attachments prepared for this purpose will not be considered and the Proposal will be considered deficient.

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- IV.1.5. If a Bidder is submitting comments to the Pre-Bid Letter of Credit for a Company, such comments must be received by 12 PM (noon) on December 5, 2017. A Bidder must submit the Proposal Form, the executed original Pre-Bid Letter of Credit for each Company, and Attachment #1 by 12 PM (noon) on December 12, 2017. A Bidder must submit the Acceptance Attachment (Attachment #2) by 12 PM (noon) on January 04, 2018. A Bidder that has otherwise fulfilled all the requirements for the Proposal must submit the Bid Form between 10 AM and 12 PM (noon) on January 10, 2018. No materials will be accepted after the deadline for such materials has passed. If the procurement schedule is revised for any reason, the Procurement Administrator will post updated deadlines for submission of materials.
- IV.1.6. If a Proposal is received on any business day during the Proposal Window, the Procurement Administrator acknowledges receipt on the business day the materials are received. The Procurement Administrator also sends the results of an initial review. If a Proposal is received before 12 PM (noon) on any business day during the Proposal Window, the Procurement Administrator sends the initial review by 6 PM on the same business day. If a Proposal is received after 12 PM (noon) on any business day during the Proposal Window, the Procurement Administrator sends the initial review by 12 PM (noon) of the next business day. The initial review either states that the Proposal is complete and is being considered, or the initial review lists items of the Proposal that are incomplete or require clarification.
- IV.1.7. A Bidder must post bid assurance collateral in accordance with the instructions provided by the Procurement Administrator. A Bidder's Proposal is automatically deficient if the executed Pre-Bid Letter of Credit for a Company proposes or includes modifications to the Standard Pre-Bid Letter of Credit for that Company that are not among those that are acceptable to the Company and posted to the procurement website.
- IV.1.8. If the Proposal is incomplete or requires clarification, the Procurement Administrator sends a deficiency notice to the Bidder. If the Bidder receives a first deficiency notice from the Procurement Administrator regarding any item of the Proposal, the Bidder has until 12 PM

(noon) on the Proposal Due Date, or until 6 PM on the second business day following the business day during which a first deficiency notice is sent to the Bidder, whichever comes later, to respond. If the Bidder responds to a deficiency notice within the time allowed but the response does not correct all deficiencies, the Bidder will, to the extent feasible, receive a further deficiency notice from the Procurement Administrator with additional time to respond. Such additional time to respond to a further deficiency notice will be no longer than (and may be shorter than) the time allowed under a first deficiency notice. If the Bidder does not correct or adequately explain the deficiency within the time allowed, the Proposal will be rejected. If the Proposal is complete, the Procurement Administrator sends a notice that the Proposal is complete and is being considered.

IV.1.9. A Bidder is eligible to submit a Bid Form if its Proposal is received on or before 12 PM (noon) on the Proposal Due Date, if acceptance of the terms of the ZEC Contract is received on or before 12 PM (noon) on January 04, 2018, and if the Bidder has responded to all requests for additional information from the Procurement Administrator. If such is the case, the Procurement Administrator sends a Bid Form to the Bidder for the Zero Emissions Facilities presented in the Proposal. Furthermore, the Procurement Administrator provides instructions for submitting the Bid Form and an invitation to a training session on the bid submission procedure.

IV.1.10. The Procurement Administrator will inform Bidders of the amount of the Supplier Fee no later than 6 PM two (2) business days before the Bid Date.

IV.1.11. The Bid Form must be filled out completely and transferred in accordance to the instructions provided by the Procurement Administrator and in accordance with the requirements of this ZEC RFP. The Bid Form may be encrypted. A Bid Form that is incompletely or inconsistently filled out will be considered deficient and will not be evaluated. No late Bid Forms will be accepted under any circumstances.

IV.1.12. A Bidder's Bid Form is evaluated if all other components of the Proposal fulfill the requirements of this ZEC RFP by 12 PM (noon) on the Bid Date.

IV.1.13. The Procurement Administrator notifies a Bidder by 6 PM on the Bid Date whether a Zero Emission Facility presented by the Bidder is selected through the ZEC RFP. Such notification is made earlier to the extent practicable or may be made on the next business day as circumstances warrant. This notification occurs by email. The Procurement Administrator provides no other information to a Bidder about the results of the procurement event.

## **IV.2. Post-Bid Process**

IV.2.1. If the ICC accepts the results of the procurement event, the Procurement Administrator will notify Bidders that presented Zero Emission Facilities selected through the ZEC RFP and approved by the Commission. The Commission will issue a notice that will also be available on the procurement website.

IV.2.2. The Procurement Administrator will advise Bidders of the contract execution process once the ZEC Contract is finalized.

IV.2.3. Bidders with Zero Emission Facilities selected through the ZEC RFP and approved by the Commission will be assessed a Supplier Fee that will be due within seven (7) business days of Commission approval. For Bidders with no Zero Emission Facilities selected through this ZEC RFP and approved by the Commission, the Pre-Bid Letters of Credit will expire as part of their terms unless the Bidder provided special instructions in its Proposal. For Bidders with Zero Emission Facilities selected through this ZEC RFP and approved by the Commission, the Pre-Bid Letters of Credit stay in place until the ZEC Contracts are fully executed for all Zero Emission Facilities and until the Supplier Fees have been paid.

### **IV.3. Personnel and Confidentiality**

- IV.3.1. Any information provided by a Bidder in its Proposal is provided on a confidential basis to the Procurement Administrator, and may be provided on a confidential basis to the Procurement Monitor, to the IPA, or to ICC Staff.
- IV.3.2. The Procurement Administrator, the Procurement Monitor, representatives from the IPA, the ICC Staff, and representatives of each Company as applicable who are involved in the evaluation of Proposals will consider all data and information provided by Bidders in response to this ZEC RFP to be confidential and will attempt to limit its disclosure to the public in accordance with the provisions of this section. Each Company will also take reasonable action to ensure that its employees, representatives and agents authorized to consider and evaluate all Proposals protect the confidentiality of such data and information. Each representative of the Procurement Administrator, Procurement Monitor, and the Companies that has access to any portion of the Proposals is required to sign a Confidentiality Statement in the form of Appendix 6 to these RFP Rules prior to evaluation of any portion of the Proposals. The list of all signatories is available to a Bidder upon request. A limited number of representatives from each Company will receive information for purposes of preparing the applicable supplier contracts. Another confidentiality agreement will be executed for this purpose.
- IV.3.3. However, absolute protection from public disclosure of the Bidders' data and information filed in response to this ZEC RFP cannot be provided and is not intended. By submitting a Proposal in response to this ZEC RFP, a Bidder acknowledges and agrees to the limitations of the confidentiality provisions set forth in this section.
- IV.3.4. In addition, the Bidders' data and information filed in response to the ZEC RFP will be disclosed if required by any federal, state or local agency (including, without limitation, the ICC) or by a court of competent jurisdiction. A Company or the Procurement Administrator will notify the Bidder in advance of such disclosure and cooperate with such Bidder, to the extent deemed

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reasonable by the Company, and at the expense of the Bidder, to prevent the disclosure of such materials. In any event, the Companies, their employees, and agents including the Procurement Administrator will not be responsible to the Bidders or any other party or liable for any disclosure of such designated materials before, during or subsequent to this ZEC RFP.

## **ARTICLE V. Reserved Rights**

- V.1.1. AIC will not be liable to any Bidder or any other party for failure to execute the applicable supplier contract. Nothing herein may be construed to bind AIC unless and until the ICC has approved selected Zero Emission Facilities for this procurement event, and the ZEC Contract with a Bidder has been executed and is effective. Once effective, it is the ZEC Contract and not the RFP Rules or any documents relating thereto that will govern the relationship between and the responsibilities of the parties.
- V.1.2. ComEd will not be liable to any Bidder or any other party for failure to execute the applicable supplier contract. Nothing herein may be construed to bind ComEd unless and until the ICC has approved selected Zero Emission Facilities for this procurement event, and the ZEC Contract with a Bidder has been executed and is effective. Once effective, it is the ZEC Contract and not the RFP Rules or any documents relating thereto that will govern the relationship between and the responsibilities of the parties.
- V.1.3. MEC will not be liable to any Bidder or any other party for failure to execute the applicable supplier contract. Nothing herein may be construed to bind MEC unless and until the ICC has approved selected Zero Emission Facilities for this procurement event, and the ZEC Contract with a Bidder has been executed and is effective. Once effective, it is the ZEC Contract and not the RFP Rules or any documents relating thereto that will govern the relationship between and the responsibilities of the parties.
- V.1.4. The Procurement Administrator reserves the right to reject Proposals submitted in response to this ZEC RFP that are incomplete, or do not conform with the requirements of this ZEC RFP, or are submitted beyond the deadline for submission, or are submitted by a Bidder that tries to unduly influence in any way the evaluation process.