

**REQUEST FOR PROPOSALS
TO PROVIDE A MEDIUM-TERM SUPPLY OF
ENERGY TO SERVE GOVERNMENTAL
CUSTOMERS IN SOUTHEASTERN NEW YORK**

July 29, 2009

Issued by New York Power Authority



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SERVE GOVERNMENTAL CUSTOMERS IN SOUTHEASTERN NEW YORK**

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RFP Highlights:

- ❖ The New York Power Authority ("NYPA" or the "Authority") is seeking proposals from Bidders interested in offering Energy or Energy combined with optional associated UCAP ("Products").
- ❖ NYPA is seeking the following:
 - 300 to 500 MW of energy from base-load resources within the New York Control Area ("NYCA") boundary
 - At Bidder's option, 300 to 500 MW of UCAP associated with the energy supplies, in Rest of State ("ROS") – within NYCA excluding New York Independent System Operator ("NYISO") Zones J and K.
- ❖ NYPA prefers Products that will be available commencing no sooner than January 1, 2010 and ending no later than December 31, 2017, preferably for a period of between three (3) and five (5) years.
- ❖ Products from specified physical sources must be from facilities that are in service at the time the bid is submitted.
- ❖ *NOTE: In furtherance of City and State clean energy and sustainability policies, bids representing physical products from coal-burning generation facilities are not eligible to bid in response to this RFP. See Section II.E.*
- ❖ NYPA will consider executing contracts with multiple suppliers for varying terms in order to meet the supply needs of its Southeast New York governmental customers.
- ❖ The successful Bidder(s) will enter into the following agreement(s) with the Authority: the Master Power Purchase & Sale Agreement ("MPPSA") for the Products, and the ISDA Agreement for financial transactions. The MPPSA and ISDA agreements are posted on the Authority's RFP website, cited below. Section III of this RFP provides additional information on these agreements. The Authority will not accept any material changes to the terms and conditions of its MPPSA or ISDA agreements.
- ❖ For all information concerning this RFP, including the MPPSA and ISDA documents, please refer to NYPA's website at <http://www.nypa.gov/doingbusiness/powerpurchase/powerpurchase.htm>
- ❖ Target dates:

Due date for all bids	August 21, 2009
Commencement of Bid Awards	October, 2009 (Upon Approval of NYPA Trustees)

All questions regarding this RFP must be submitted as set forth herein. Mr. Jordan Brandeis, Vice President of Power Resource Planning & Acquisition will serve as NYPA's point of contact for all communications with Bidders. Except as otherwise stated in this RFP (see Section VIII) no other contact with NYPA or its Southeast New York governmental customers concerning this RFP will be allowed during the RFP process. Violation of this requirement may be grounds for disqualification from the RFP process.

New York Power Authority

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Request for Proposals to Provide a Medium-Term Supply of Energy To Serve Governmental Customers in Southeastern New York

I. Introduction

- A. *Summary of the Request.* The objective of this Request for Proposals (“RFP”) is to obtain 300 to 500 MW of energy from base load resources and optional UCAP to meet the supply needs of its Southeast New York governmental customers. The Authority seeks to purchase Products no sooner than January 1, 2010, and to conclude no later than December 31, 2017. Offers in the 3-5 year range are preferred. NYPA will consider executing contracts with multiple suppliers, for varying products (i.e., energy only or energy with associated UCAP) and for varying terms, in order to best meet its customers’ supply needs. Products to be procured may be in the form of physical products, financial instruments or a combination of the two.
- B. *Proprietary Information.* Bidders are hereby advised that the Authority is subject to the New York State Freedom of Information Law (“FOIL”). Confidential information will be treated as such to the extent consistent with the Authority’s legal obligations under the FOIL and other applicable laws, regulation or legal process and the provisions of any Confidentiality Agreement between the Authority and Bidder.

Upon the request of a Bidder, NYPA will enter into Confidentiality Agreement with the Bidder concerning information the Bidder wishes to protect from public disclosure. This agreement shall be subject to FOIL and other applicable legal requirements as set forth above.

II. Specifications for All Bids

The following requirements apply:

- A. *Term.* Products shall be available to commence delivery no sooner than January 1, 2010, and end delivery no later than December 31, 2017.
- B. *Quantities.*

Energy: Bidders may bid for any or all of the requested energy in increments of at least 25 MW of energy, up to the full amount specified.

UCAP: Bidders may bid for to supply UCAP in the amount corresponding to the energy bid.

- C. *Delivery Location for Physical Products.*

Energy: Bidders shall be responsible for delivering the requested energy to a bus in the NYCA to be mutually agreed with NYPA. Bidders shall be responsible for all transmission charges and transmission losses, including the NYISO Transmission Usage Charge, incurred to reach the specified delivery point.

UCAP: UCAP shall be provided from “Rest of State” (ROS), which excludes NYISO Zones J and K.

D. *Settlement Requirements for Financial Transactions.*

Bidders should offer one or more financial products or Contracts for Differences (“CFDs”), for settlement in a specified NYISO Zone.

If Bidders propose CFDs, the bids shall reflect quotes for fixed prices per MWh, in which the Authority is the fixed-price payor and the Bidder is the floating-price payor. The settlement index is the day-ahead NYISO Location Based Marginal Price (“LBMP”) in the specified zone applicable to the hour in question for the specified amount of energy.

E. *Settlement Requirements for Physical Transactions*

Only products from existing facilities, in service prior to the deadline for submission of bids in response to this RFP, will be considered.

Bidders shall describe in full the facility or facilities that will provide the Products, including the facility name, location, fuel type, and date of interconnection. Bidders shall also provide detailed information on the facility’s (facilities’) maintenance and forced outages for the most recent five years, or since the commencement of commercial operation if more recent.

If Bidders propose unit-firm physical products, the bids shall specify the schedule of planned outages and the guaranteed availability percentages to be applied throughout the term of their bids.

NOTE: In furtherance of the New York City’s greenhouse gas reduction plan set forth in PlaNYC (the City’s long term sustainability plan), and New York State’s clean energy goals (including Governor Paterson’s 45 x 15 initiative), NYPA and its Southeast New York governmental customers have determined that physical products from coal burning generation facilities are not eligible to respond to this RFP.

F. *Pricing Options.* Bidders must specify in detail each pricing method proposed. Bidders are encouraged to be creative in the development and presentation of their pricing options. All types of pricing options (e.g., fixed, options, spark spread and unit-contingent) will be accepted, and Bidders may submit more than one type of pricing option. If in the form of fixed price, firm bids, the prices may vary from year to year, but the price in each year should be specified in the bid. Prices quoted must include all costs categorized by function (e.g., energy, transmission and capacity), either on a fixed or pass-through basis, to the specified delivery point. Bidders should identify any pass-through costs, and the methodology for calculating such costs should be clearly detailed.

G. *Risk Identification.* Bidders shall specify and explain how they plan to share or assume the following risks: (1) fuel cost risk; (2) environmental risk (e.g., RGGI); (3) operational risk; and (4) regulatory risk.

- H. *Validity of Offers.* Terms offered by Bidders of physical products must remain valid and available until execution of the MPPSA, following approval by the NYPA Trustees.

III. Required Contract Agreements

Every Bidder selected to provide UCAP and/or physical energy products shall be required to execute NYPA's Master Power Purchase & Sale Agreement ("MPPSA"). Every Bidder selected to provide CFDs shall be required to execute an ISDA Master Agreement, Schedule and Confirmation (collectively, the "ISDA Agreement"). These forms of agreement are available on the RFP website

<http://www.nypa.gov/doingbusiness/powerpurchase/powerpurchase.htm>

No material changes to the NYPA MPPSA or the ISDA Agreement will be entertained. Bidders must identify any of their non-material changes, in the form of a red-line version, 10 days prior to their bid submittal.

IV. Credit & Surety Requirements

Detailed credit support requirements are set forth in the MPPSA, and ISDA Agreements posted on the NYPA website.

All Letters of Credit, Performance Bonds, Payment Bonds, or similar instruments shall name as beneficiary the Power Authority of the State of New York and may be invoked to the benefit of the Power Authority of the State of New York, upon delivery of a certified statement to the issuing bank or surety company that the Bidder has failed to perform pursuant to the terms and conditions of its contract with the Power Authority of the State of New York. The Bidder shall provide, a letter from its bank or surety company stating that the letter of credit or bond will be provided if considered for a contract or in the event of a contract.

V. Bidder and Proposal Requirements

- A. *Minimum Bidder Requirements:* In order to be considered, Bidders' proposals must meet the following Minimum Requirements:
1. Proposals must be received by the RFP due date.
 2. Proposals must be complete, in conformance with the specifications and other requirements of this RFP and include all documentation, evidence or verification requested.
 3. Bidders shall be responsible for all costs and risks for delivery of products to the specified point or points of delivery.
 4. All Bidders offering physical products must supply a summary description of its business and history, including its experience in the area of electric supply, its familiarity and experience with NYISO requirements and its membership status with the NYISO, and information concerning the existing electric generating plants owned and/or operated by the Bidder. Bidders who are not active members of the

NYISO must provide the same information for an outside firm that will provide these services and a commitment letter from that firm, or a plan and schedule for fulfilling the membership terms of the NYISO.

5. Bidders must specify the bank or banks that would provide the necessary letters of credit.
6. All Bidders must agree to comply with applicable local, state and federal laws and regulations, including the requirements of the New York State Public Officers Law establishing standards for business and professional activities of New York State employees and governing the conduct of employees of private firms in business with New York State. MPPSA, ISDA Agreements and any other agreements entered into by and between the Authority and Bidder shall be governed by and construed in accordance with the laws of the State of New York.
7. Bidders must recognize that providers are subject to the rules and procedures of the NYISO.
8. Disclosure of any instances in the last five years where Bidder, any of its officers, directors or partners, any of its affiliates, or its proposed guarantor (if any) defaulted or was deemed to be in noncompliance with any obligation related to the sale or purchase of power (capacity, energy and/or ancillary services), transmission, natural gas, or financial instruments, or was the subject of a civil proceeding for conversion, theft, fraud, business fraud, misrepresentation, false statements, unfair or deceptive business practices, anti-competitive acts or omissions, or collusive bidding or other procurement- or sale-related irregularities.
9. Disclosure of any instances in the last five years where Bidder, any of its officers, directors or partners, any of its affiliates, or its proposed guarantor (if any) was convicted of (i) any felony, or (ii) any crime related to the sale or purchase of power (capacity, energy and/or ancillary services), transmission, natural gas, or financial instruments, or was the subject of a civil proceeding for conversion, theft, fraud, business fraud, misrepresentation, false statements, unfair or deceptive business practices, anti-competitive acts or omissions, or collusive bidding or other procurement- or sale-related irregularities.
10. Information indicating Bidders' and any proposed guarantors' financial condition and evidence of creditworthiness. Bidders must provide their and any proposed guarantor's most recent audited financial statements. If audited financial statements are not available, Bidders must explain and provide unaudited statements or other details regarding their financial status.

B. Additional requirements:

1. *Business Background.* Briefly describe the Bidder's business organization and history, emphasizing relevant experience.
2. *Changes by the Bidder.* If a Bidder changes any element(s) of its bid, NYPA, in its sole discretion, may disqualify the Bidder.

3. *Procurement Disclosure Requirements.* See attached Appendix J. The New York Power Authority has adopted a policy providing for increased disclosure in the public procurement process. The Authority has determined that this RFP shall be subject to this policy. Therefore, each Bidder must complete Appendix J in its entirety and return with Bidder's proposal.

VI. Submission of Proposals

- A. All proposals in response to this RFP must be received no later than 4:00 pm Eastern Standard Time on August 21, 2009. All proposals must be in a sealed envelope, marked as "NYPA Medium-Term Energy - SENY" and addressed to:

Jordan Brandeis, Vice President, Power Resource Planning and Acquisition
New York Power Authority
123 Main Street
White Plains, NY 10601
- B. Two copies of the proposals are required. Late proposals may be returned unopened. Bidders should mark any items regarded as confidential. NYPA reserves the right to reject any and all bids for any reason or no reason.
- C. Bidders must also submit one copy of their proposal electronically, either by CD-ROM or by e-mail to **jordan.brandeis@nypa.gov**, to be received by the date and time set forth above.

VII. Evaluation Process and Criteria

- A. *Selection Process.* The process of selecting bids and negotiating final terms may be an iterative process. The Authority will evaluate the proposals based upon the supplied information and may, in the Authority's discretion, develop a "short list" of Bidders who may be asked to meet with the Authority at its office in White Plains, New York, as a part of the selection and/or negotiation process. If necessary, Bidders may be asked to refine their bids in subsequent rounds of bidding.
- B. *Evaluation Criteria.* Evaluation criteria will include, but not be limited to, the following (not necessarily in order of importance):
 - Meeting the objective of this RFP as expressed in *Summary of Request*.
 - Evaluated price of Bidder's proposal
 - Impact on NYPA's risk-adjusted overall portfolio cost
 - Sensitivity of evaluated net cost to fluctuations and uncertainties of future energy markets
 - Conformance with and contribution to stated environmental and other policy objectives of New York State and New York City
 - Creditworthiness of Bidder
 - Conformance/acceptance of material terms of the MPPSA and ISDA Agreement
 - Bids or bid packages that minimize risk to the Authority and its Southeast New York governmental customers.

- C. *Basis for Disqualification.* A Bidder may be disqualified and the bid not considered for reasons including, but not limited to, the following:
- Receipt of the bid after the deadline for submission;
 - Failure to meet all eligibility requirements;
 - Incomplete bid;
 - Willful misrepresentations in the bid;
 - Illegal or undue attempts to influence the bid review process;
 - A determination by NYPA that the Bidder is incapable of meeting its financial obligations including, but not limited to, inadequate credit rating or creditworthiness, failure to supply a requested letter of credit, parent guaranty or other form of security acceptable to the Authority;
 - A determination by NYPA in its sole discretion that the Bidder is incapable of carrying out its power supply responsibilities;
 - A determination by NYPA that some or all bids should be rejected.

VIII. Communication during RFP Process

NYPA's contact person for this solicitation is Jordan Brandeis, who can be reached at:

Telephone: (914) 681-6413
 Fax: (914) 390-8156
 Email: jordan.brandeis@nypa.gov

Unless otherwise agreed in advance with Mr. Brandeis, Bidders must not communicate directly or indirectly with any NYPA Trustee, officer, employee, or consultant or other representative of NYPA or its advisors or its Southeast New York governmental customers or their advisors on matters related to this RFP other than the designated contact person specified above.

Answers to questions of general interest will be posted on the NYPA website:

<http://www.nypa.gov/doingbusiness/powerpurchase/powerpurchase.htm>

IX. Miscellaneous

Failure to Reach Timely Agreement. NYPA and the selected Bidder(s) will endeavor to reach final agreement on terms and conditions within a reasonable interval from NYPA's notification to the Bidder(s) of the selection of the Bidder(s). NYPA, in its sole discretion, may terminate negotiations with any Bidder at any time.

RFP Not Binding on Authority. This RFP is not an offer or commitment and is not capable of being accepted to form a binding agreement. The Authority reserves the right, in its sole discretion, to withdraw or modify this RFP at any time, to reject any or all proposals for any reason, or no reason, and to enter into further discussions or interviews with any one or more Bidders.

Approval of NYPA's Trustees. Execution of a final, binding agreement or agreements shall be subject to the approval of NYPA's Trustees.