

## THE DEPARTMENT OF ENERGY RESOURCES RELEASES THE FOLLOWING UPDATE ON SECTION 83D CLEAN ENERGY SOLICITATION

The Department of Energy Resources (“DOER”) provides this update on the Section 83D of the Act Relative to Green Communities (“Section 83D”) Request for Proposals for Clean Energy (“RFP”) along with an overview of Section 83D and the solicitation process in the RFP.

### **I. Status of Section 83D Procurement**

On January 25, 2018, the North Pass Hydro (“NPT Hydro”) project was announced as the selected bidder of the Section 83D RFP. As provided in the RFP, the final acceptance of the NPT Hydro bid and the award of a contract are conditional upon (1) the successful negotiation of contracts between NPT Hydro and the Electric Distribution Companies (“EDCs”) and; (2) regulatory approval of those contracts at the Department of Public Utilities (“DPU”).

The decision to select NPT Hydro was based on a competitive RFP process that resulted in the receipt of 46 bids. These bids were assessed according to the rigorous framework and process outlined by Section 83D and the RFP, and was closely monitored by the Independent Evaluator (“IE”) who was jointly selected by DOER and the Attorney General’s Office (“AGO”).

As a result of a robust bid evaluation process and based on the information supplied by the bidder and available at the time, the NPT Hydro project was determined to provide the greatest overall value to Massachusetts’ customers. Through comparing project costs and benefits to ratepayers as specified in the RFP evaluation criteria, the project proposed by NPT Hydro best satisfied the policy directives contained in Section 83D, including the project’s ability to assist the Commonwealth with meeting its Global Warming Solutions Act (“GWSA”) greenhouse gas reduction goals. In the evaluation analysis the project was projected to produce significant and timely emissions reductions that would assist the Commonwealth with compliance towards the ambitious goals established by the GWSA. As proposed, the project would deliver approximately 9,450,000 megawatt hours of cost-effective and firm clean energy per year starting in 2020.

Following the announcement, DOER recommended on January 31, 2018, and the EDCs agreed, that the IE continue to monitor the next phase of the procurement, including contract negotiations. The decision to include the IE in monitoring this phase of the process is beyond the original scope of the IE’s role, and adds a further layer of oversight.

On February 1, 2018, the New Hampshire Site Evaluation Committee (“NHSEC”) voted to deny a Certificate of Site and Facility for NPT Hydro. To date, a formal written order has yet to be issued. While all bidders in the RFP had permitting risk and were in various stages of obtaining their respective permits, the NHSEC vote has the potential to significantly impact or render infeasible the NPT Hydro project’s ability to deliver clean energy within the timeframe proposed by the bidder, as well as impact other material aspects of the NPT Hydro bid.

The following day, DOER sent a letter to the EDCs requesting that they immediately send a communication to NPT Hydro to obtain information regarding any impacts on NPT Hydro's bid from the NHSEC vote, as well as whether NPT Hydro plans to seek regulatory and/or legal remedies, and a schedule for this or any other pertinent action. The EDCs requested information from NPT Hydro, and received a confidential response from the project on February 7, 2018. As provided in the February 2 letter, DOER and the IE met with the EDCs on February 9, 12, and 13 to discuss the information provided by NPT Hydro and to determine next steps, including whether the EDCs should consider other bids.

In light of recent developments and in order to execute long term contracts by March 27 and subsequently submit them for DPU approval by April 25, the EDCs, in coordination with DOER and with participation of the IE, took the following actions on February 14, 2018:

1. NPT Hydro was notified that the EDCs will continue conditional contract negotiations with the project, with the option of ceasing discussions with NPT Hydro and terminating its conditional selection by March 27, 2018; and
2. The New England Clean Energy Connect 100% Hydro project ("NECEC Hydro") was offered to enter into concurrent conditional contract negotiations.

If contract negotiations are not successful with NPT, the EDCs are in a position to proceed with the next best project that satisfies the policy directives contained in Section 83D, including the project's ability to assist the Commonwealth with meeting its GWSA greenhouse gas reduction goals. This approach is designed to ensure that the 83D RFP schedule for March 27, 2018 contract execution and April 25, 2018 contract submission is maintained, while ensuring that any contract entered into by the EDCs reflects the original project timeline proposed by the bidder.

On February 15, 2018, the DOER, EDCs and IE received acceptance from NPT Hydro and NECEC Hydro of these terms.

## **II. Legislative Background**

Passed as part of the "Act to Promote Energy Diversity" in 2016, Section 83D provides the framework to solicit clean energy generation resources. It directs the EDCs to jointly and competitively solicit proposals for clean energy generation. Provided that reasonable proposals were received, Section 83D requires the EDCs to enter into cost effective long-term contracts for clean energy generation for an annual amount of electricity equal to approximately 9,450,000 megawatt hours by December 31, 2022.

Additionally, Section 83D provides the solicitation process framework, defining the roles of the EDCs, DOER, and the IE in the execution of the solicitation process. Among other things, DOER's role includes the joint selection of the IE together with AGO, the proposal of a timetable and method of solicitation together with the EDCs and in consultation with the AGO, and a review of reasonableness of the bids. The IE's role includes the monitoring of and reporting on the solicitation and bid selection process to ensure an open, fair and transparent

process that is not unduly influenced by an EDC affiliate. The IE must file a report with the DPU providing its independent assessment of whether all bids were evaluated in a fair and non-discriminatory manner. In order to preserve the IE's role as an independent monitor of the process, the IE is neither a soliciting party, nor does it serve as a member of the Evaluation Team or Selection Team.

No long-term contract may become effective and binding upon the EDCs' ratepayers without DPU approval. As part of the DPU's review process, the DPU must consider the IE's report and the recommendations of the AGO. The DPU cannot approve a long-term contract unless it finds that it is a cost-effective mechanism for procuring low-cost renewable energy on a long-term basis. In making this determination, DPU must take into account specific statutory and policy factors identified in Section 83D. If the IE includes in its findings that the solicitation and bid selection was not fair and objective and that the process was substantially prejudiced as a result, Section 83D requires the DPU to reject the contract.

### **III. Bid Evaluation and Selection Process**

Pursuant to the statutory mandate under Section 83D, the EDCs and DOER proposed the RFP's timetable and method for the solicitation to the DPU on February 2, 2017. The EDCs and DOER consulted with the AGO on the choice of solicitation method. Once filed, the RFP was made publicly available, and the DPU requested comments on the RFP's timetable and method for the solicitation. The DPU rendered its approval on March 27, 2017.

The fundamental purpose of the RFP is to satisfy requirements of Section 83D and to assist the Commonwealth with meeting its GWSA goals. The standards and criteria outlined in the RFP were designed towards a selection of a project or projects that would have a strong likelihood of being financed and constructed and would provide a cost-effective source of long-term clean energy generation to the Commonwealth.

As indicated in the RFP, the Evaluation Team, which includes the EDCs and DOER, is responsible for evaluating and ranking project bids. The IE's role is to closely monitor and report on the solicitation and bid evaluation process. This role requires the IE to monitor and have access to all information and data related to the solicitation and bid selection process, including any confidential information provided by bidders.

The RFP provides for an evaluation process that the Evaluation Team must follow. The process includes the following three stages and criteria:

- (i) In Stage One, the RFP requires the Evaluation Team to evaluate whether the bid satisfies eligibility and threshold requirements. Bids that do not satisfy all of the Stage One screening criteria are likely to be disqualified from further evaluation.
- (ii) In Stage Two, the RFP requires the Evaluation Team to evaluate bids based on quantitative and qualitative criteria. The results of the quantitative and qualitative analysis are used to produce a relative scoring of all proposals. Stage Two scoring

is based on a 100-point scale, with up to 75 points for quantitative factors and up to 25 points for qualitative factors.

- **Quantitative Evaluation (75 Points):** The RFP requires the Evaluation Team to evaluate the bid's direct contract price costs and benefits. This includes comparing bids' offered energy, environmental attributes, and transmission costs to the associated market value. Additionally, the Evaluation Team evaluates other costs and benefits to all Massachusetts' retail consumers, such as energy price reductions when the project is placed into service, and impacts from the proposal on the Commonwealth's greenhouse gas emissions. The quantitative method used a multi-year net present analysis of all costs and benefits to develop a Stage Two quantitative score.
- **Qualitative Evaluation (25 Points):** The RFP provides criteria for the Evaluation Team to assign 25 points for each proposal, depending on the information provided in each bid. Examples of qualitative criteria include whether a bid supports GWSA requirements, improves reliability, or has significant environmental impacts.

After ranking bids, the Evaluation Team determines which proposals proceed to Stage Three based on the following considerations: (1) the rank order of bids at the end of the Stage Two evaluation; (2) the cost effectiveness of bids based on the Stage Two quantitative evaluation; and (3) the ability of a bid or group of bids to meet the procurement target of 9,450,000 megawatt hours.

(iii) In Stage Three, the Evaluation Team evaluates portfolios or groups of bid(s) to achieve approximately 9,450,000 megawatt hours of clean energy. Portfolios are ranked using the Stage Two evaluations. The Stage Three evaluation also considered additional discretionary factors that were specified in the RFP and included:

- Overall impact of various portfolios of bids on the Commonwealth's policy goals, including GWSA goals;
- Overall cost effectiveness of various portfolios of proposals;
- Risks associated with project viability of the proposals;
- Any benefits to customers that may not have been fully captured in the Stage Two evaluation (for instance, benefits to the Commonwealth during winter months);
- Transmission-related price risks not fully captured in Stage Two, and;
- Other considerations, as appropriate, to ensure selection of the bid that provides the greatest impact and value consistent with the stated objectives and requirements of Section 83D, as set forth in the RFP.

After Stage Three concludes, the Selection Team, made up of the EDCs with DOER monitoring, selects the bid or bids to move forward to contract negotiations. If the EDCs do not

agree, DOER in consultation with the IE must make a binding determination. The RFP provides that DOER will monitor contract negotiations after the bid selection.

The RFP set forth March 27, 2018 as the anticipated date for contract execution and April 25, 2018 as the anticipated date for submitting executed contracts to the DPU for final approval.

As stated above, the final acceptance of any bid, and award of contract, is conditional upon successful regulatory approval at the DPU, which, as a part of its approval process, is required by statute to consider recommendations from the AGO and comments from the public. In order to provide transparency, at the time of contract submission to the DPU, additional detailed information supporting the selection of the contracted project and information pertaining to the evaluation of the bids will be made available. Separately, the IE will provide a report on the evaluation and bid selection process, and whether all bids were evaluated in a fair and nondiscriminatory manner. The public will also have the opportunity to comment on contracts filed before the DPU, and the DPU will conduct a full adjudicatory proceeding to review the contracts.

Further information regarding the Section 83D procurement, including the RFP and public version of the project bids, can be found on the Massachusetts Clean Energy Website at <https://macleanenergy.com/>.