

**STATE OF CONNECTICUT**  
**DEPARTMENT OF ADMINISTRATIVE SERVICES**  
**PROCUREMENT DIVISION**  
**450 Columbus Boulevard, Hartford, CT 06103**

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| <b>BID NO.:</b><br><b>19PSX0097</b>         |
| <b>Bid Due Date:</b><br>3 June 2020         |
| <b>Date Addendum Issued:</b><br>24 May 2019 |

**PLEASE NOTE:**  
**This document has been marked as "Returnable". Electronic submittal of this document indicates that your company has read and accepted any modifications to the bid that are contained in this Addendum.**

**BID ADDENDUM #2**

DESCRIPTION:  
**Firm Supply of Electricity**

FOR:  
**Department of Administrative Services and All Using State Agencies**

**BIDDERS NOTE:**

**Bid Clarification(s)**

1) In the Invitation to Bid document, Replace the paragraph titled "Bidder Participation" found on page Seven (7) of Ten of (10), paragraph One (1) with the following:

**Only Bidders that have been qualified as a result of the DAS Request for Proposal RFQ 19PSX0019 will be allowed to participate in this Invitation to Bid.**

2) Add the following sentence to the Invitation to Bid paragraph "Stability of Prices" found on page Eight (8) of Ten (10), paragraph Four (4) with the following: All other language in this paragraph remains.

**Any price offerings from bidders must be valid for a period of three (3) days from the due date of the bid.**

3) United Illuminating Account information requiring updated information is provided: See Addendum 2 UI Account information.

**Bidder Questions and answers below.**

1. Prices are due by June 3, 2019 at 10:00am EST. When will the bidder be notified of award? In other words, how long must bidder's prices be held?

**Answer: Should DAS make the determination to issue a Contract Award, DAS intends to notify a successful Bidder on the Bid due date shortly after evaluating the Bid(s). However such notice provided by DAS may be the following day.**

2. Insurance Accord Certificates: Are the insurance certificates due May 31?

**Answer: Bidders are required to upload their insurance accord certificates to their CT DAS Biz-Net Account prior to the due date of the bid along with their other required certification documents.**

3. Price schedule: Regarding Class I renewable generation of 25%, 50%, 100%, are these percentages inclusive of the CT renewable portfolio standard?

**Answer: Yes, those percentages are inclusive of the current Class I RPS.**

4. Please clarify how the award process will work. Will the State and Supplier sign a contract on the same day as the award or will the State issue an award letter? If so, please confirm that any award letter shall be official and binding on all parties and the failure by the State to return all executed documents will in no way be a defense to, or otherwise limit, the enforceability of the Bid Contract.

**Answer: See answer to question number one (1). Additionally, please see the CT DAS "Contractor Information Form" to be electronically signed and submitted with the bid submission. A Bid is binding upon the Bidder's submission and awarded at DAS's discretion. When completing the Bidder's Information document. The Bidders authorized signatory must electronically sign the document. If an award is administered, DAS will send notice to the Awarded Contractor via e-mail.**

5. Pricing terms: Is the State requesting an all-in fixed price product or will the State issue subsequent request for proposals that may vary in product type? Will the State be including definitions for the following pricing components and how Supplier should treat them:
- a. Energy Costs
  - b. Ancillary Services Costs (including RMR)
  - b. Capacity Costs
  - d. Line Loss Costs
  - e. Renewable Portfolio Standards Costs (RPS)
  - f. Fuel Security Costs (FSC)
  - g. Auction Revenue Rights credits
  - h. Transmission Loss Credits

**Answer: See the ITB Exhibit A, page 1, paragraph titled "Full Requirements Electricity Supply".**

6. With respect to Section 4 of the ITB and Category A of Exhibit B, can the State confirm that if necessary to maintain the EDC consolidated billing as indicated in the ITB, Connecticut Gross Receipts Tax (GRT), if applicable, the State will modify the requirement that suppliers include GRT in its pricing, and confirm GRT shall be passed through to each Client Agency as a separate line item on its invoice.

**Answer: See the ITB Exhibit A, page 1, paragraph (a) Contract Pricing, Exhibit B.**

7. With respect to Section 4 of the ITB, Supplier requests the State to clarify whether the State is requesting prices to include 50% and 100% Class I renewable generation above and beyond the RPS requirement or inclusive of the RPS requirement. Supplier would like to point out to the State that “green” claims can only be made for renewable generation purchases above and beyond the RPS requirement. For example, if the State has an RPS requirement of 13% and the State purchases an additional 37% renewable generation, then the State may only make renewable claims of 37% and not 50%. What is the State’s intent and expectations with regard to how it will proceed with handling “green” claims?

**Answer: The 50% and 100% Class 1 levels are inclusive of the current 19.5% RPS. Green claims will be made according to the current practice.**

8. Can the State provide any accounts that have co-gen, solar power, or any other separate sources of power along with the applicable details (type of generation, size, date of operation, etc.)?

**Answer: DAS is not aware of any accounts within the solicited pool of accounts that have co-gen, solar power, or any other separate sources of power.**

9. Billing: It is Supplier’s interpretation that the State has requested EDC consolidated billing, in which the EDC invoices each Client Agency for its charges as well as Supplier’s charges. Is the State agreeing to have suppliers issue their own invoices for retail supply charges in the event that the State is requesting that any of Supplier charges be passed through?

**Answer: The Supplier will not be invoicing the Client Agencies. See the ITB Exhibit A, page 2, paragraph (b) Payment and Billing.**

10. Section 4. (b)(1) of the Bid Contract indicates Supplier shall submit an invoice. The State is requesting a utility single bill (Exhibit A 1.(b)), and as such is the State going to accept the EDC invoice in lieu of an invoice from the Supplier?

**Answer: Yes. The supplier will not be sending an invoice to the Client Agency.**

11. In the ITB, Section 3(b) provides that DEEP is allowed to add accounts with a limit set to 5% of awarded load. Can the State confirm that the adding of accounts is only allowed for DEEP?

**Answer: Only the CT DEEP will represent Client Agencies to the Supplier for any changes (Additions and Removals of accounts) required.**

12. Can the State clarify if the RECs being purchased, beyond the RPS requirement, need to be Connecticut Class I certified?

**Answer: Yes, they will be required to be Class 1 Certified.**

13. Insurance: Can the State clarify what insurance the Contractor is required to maintain in the event that it is awarded under the ITB and Bid Contract, including the form of insurance (e.g. general liability) and the required limits.

**Answer: The Insurance types and amounts found in the resulting Contract document are required.**

14. The State is requesting confidential information relating to suppliers' insurance policies (i.e., the insurance declaration page described in Section 4(b) of the ITB and Section 15(e)(2) of the Bid Contract. If Supplier provides a certificate of insurance will that satisfy the State as an alternative to the insurance policy declaration page to the State?

**Answer: No**

15. If a body of competent jurisdiction determines the State is contributory negligent with regard to any claims then it would be an injustice to permit the State recover under a supplier's insurance policy. Can the State clarify why it would be entitled to recover for the State's bad acts or inactions?

**Answer: The contractor is not responsible for indemnifying the State from any liability due to the State's negligence (see Section 15(b)). With respect to contributory negligence, multiple parties are at fault and the State needs the right to recover in this situation. This provision is required by the Attorney General.**

16. Financial Condition: With respect to provision (e) of the section titled "Financial Condition" in the ITB, Supplier's parent company is rated above investment grade by Moody's & S&P. If a supplier cannot provide its audited financial statements for any reason, will the State accept access to the 10-k report developed by Supplier's parent company as an alternative to such financial statements? Can the State clarify the need for suppliers to provide collateral, in any form?

**Answer: Please clarify where this was stated in the ITB.**

17. Contract Terms and Conditions: Is the State willing to modify the Regulatory Change provision on page 2 of Exhibit A in the ITB, to have it confirm with industry standards. For example, is the State willing to modify the provision as follows:
- (i) the provision be amended to reduce the notice required prior to the implementation of a regulatory change to thirty (30) days or, in the event Supplier itself does not receive thirty (30) days advance notice, as soon as commercially reasonable;
  - (ii) the State clarify that the regulatory change notice must be provided to the State within the specified timeframe based upon the implementation by Supplier (e.g. passing through of increase/decrease in costs). Supplier likely would not be able to provide advance notice prior to the implementation by the UDC, ISO, FERC, etc; and
  - (iii) this provision in no way shall be superseded, replaced, or limited by Section 4(d) of the Bid Contract.

**Answer: The State of Connecticut DAS is unwilling to modify this section.**

18. Is the State willing to modify Section 8 of the Bid Contract to permit suppliers the limited ability to assign without consent to any affiliate or entity succeeding to all of substantially all of supplier's assets or business or into which such supplier may be merged. Proposed language Supplier would like the State to consider:

"Notwithstanding the foregoing, the Contractor may assign all of its rights and obligations under the Contract to any: (A) person or entity (i) succeeding to all or substantially all of the Contractor's assets or business or the division or region of the Contractor to which the Contract relates or (ii) into which the Contractor is merged or otherwise combined or reorganized (provided with respect to this provision (A) that the succeeding entity agrees to be bound to the Contract); or (B) affiliate."

**Answer: The State of Connecticut DAS is unwilling to modify this section.**

19. Given the transaction between the State and suppliers involves a commodity, to make a supplier whole in the event of an early termination or breach by a Client Agency as set forth in Section 9(a) or Section 11, and avoid litigation of the issue is the State willing to modify Exhibit A to include liquidated damages formula as follows:

"The Contractor may calculate a termination payment in good faith which shall be (i) the positive difference, if any, between the contract price and the Market Price, multiplied by the estimated undelivered volume of electricity which the Client Agency would consume from the early termination date through the original term of the Contract, as reasonably calculated by the Contractor; and (ii) any unpaid amounts due from the Client Agency to Contractor. The "Market Price" shall be the price of electricity and services as of the early termination date under terms substantially similar to those of the applicable terminated Contract. The Contractor may determine the Market Price of a terminated transaction by reference to information either available to it internally or supplied by one or more third parties.

**Answer: The State of Connecticut DAS is unwilling to modify this section.**

20. With respect to Section 15 and particularly provision (c), can the State clarify it agrees that a supplier is not responsible for the delivery of electricity to each Client Agency's accounts. Consequently, can the State acknowledge and agree that title passes from a supplier to the Client Agency at the ISO/EDC interconnect, the EDC and ISO are exclusively responsible for the energy transmission and delivery system, Supplier has no independent control over their systems, and Supplier will have no liability for any of their acts or omissions.

**Answer: The State agrees that the title passes from a Supplier to the Client Agency at the ISO/EDC interconnect. The EDC and ISO are responsible for transmission and delivery.**

21. With respect to Section 16, given the complexities involved in commercial transactions such as the supply of electricity, is the State willing to have the parties waive any right to a jury trial? This practice is standard in the industry. Would the State be willing to include the following language:

"TO THE EXTENT ALLOWED BY APPLICABLE LAW, EACH PARTY HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT SUCH PARTY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY ACTION, SUIT OR PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THE CONTRACT."

**Answer: No**

22. With respect to Sections 17(f) and 18 of the Bid Contract, the nature of retail electricity service is quite different than the procurement of typical goods and services such as office supplies. As such, is the State willing to include the following disclaimer of implied warranties in Exhibit A:

“DAS AND EACH CLIENT AGENCY ACKNOWLEDGE AND AGREE THAT NO WARRANTY, DUTY, OR REMEDY, WHETHER EXPRESSED, IMPLIED, OR STATUTORY, IS GIVEN OR INTENDED TO ARISE OUT OF THE AGREEMENT EXCEPT AS OTHERWISE EXPRESSLY STATED HEREIN, AND THE CONTRACTOR SPECIFICALLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR USE.”

**Answer: No**

23. Can the State modify Exhibit A to make Section 23 Setoff of the Bid Contract be made mutual with language similar to the following:

“In addition to all other remedies available hereunder, each party, in its reasonable discretion, may setoff (1) any costs or expenses that it incurs resulting from the other party’s unexcused nonperformance under the Contract and under any other agreement or arrangement that the other party has with it and (2) any other amounts that are due or may become due from the other party to it, against amounts otherwise due or that may become due to the other party under the Contract, or under any other agreement or arrangement between the parties. Each party’s right of setoff shall not be deemed to be such party’s exclusive remedy for the other party’s breach of the Contract, all of which shall survive any setoffs by such party.”

**Answer: The State of Connecticut DAS is unwilling to modify this section.**

24. Is the State willing to limit any cross-default provision to (i) contracts between Contractor and the same State of Connecticut-related entity and (ii) instances of gross negligence, willful misconduct, fraud, and insolvency/bankruptcy.

**Answer: No**

25. Can the State confirm it agrees that Sections 5, 17(b)-(c), 19, 21, 22, and 28 do not apply to the supply of retail electricity and shall not apply to any award under the ITB and Bid Contract?

**Answer: No**

26. The standard in the industry for the supply of retail electricity is to limit damages to actual direct damages for either party. Is the State willing to modify Exhibit A to include a Limitation of Liability provision with language is as follows:

“Notwithstanding any other provision to the contrary, neither party nor their respective officers, directors, shareholders, associates, employees, agents, representatives, successors and assigns, shall be liable to the other party for any consequential, exemplary, special, incidental, or punitive damages (including, without limitation, lost opportunities or lost profits (other than profits contemplated under the liquidated damages provision)) which are connected with or resulting from claims arising out of, or in connection with, the

performance or non-performance of a party's obligations under the Contract. The entire liability of each party for any and all claims will be limited to direct actual damages, subject in all cases to an affirmative obligation of each party to mitigate its damages."

**Answer: The State of Connecticut DAS is unwilling to modify this section.**

27. While not set forth in any of the ITB documents, can the State make the following representations and warranties to suppliers:

"State Representations and Warranties: DAS and each Client Agency warrant and represent to the Contractor that: (i) it is duly organized, validly operating and in good standing under the laws of the jurisdiction of its formation; (ii) it is authorized and qualified to do business in the jurisdictions necessary to perform under the Contract; (iii) execution, delivery and performance of the Contract are duly authorized and do not violate any governing documents or any of its contracts or any applicable law; (iv) there is no material event(s) or agreement(s) which would impair the its right, authority or ability to execute the Contract and otherwise perform under the Contract; (v) it has the knowledge and experience to evaluate the merits and risks associated with the Contract; (vi) the data given and representations made concerning the account(s) are true and correct; (vii) it is entering into the Contract to purchase its energy requirements only and not for speculative or resale purposes and that the energy purchased under the Contract will be consumed at the facilities to which the account(s) relate; and (viii) the signatory has the authority to enter into and bind the it to the Contract."

**Answer: No**

28. Can the State confirm that it has appropriated funds for the supply of retail electricity as set forth in the ITB? If not, will the State agree to obligate itself as follows:

"DAS and each Client Agency will at all times use its best efforts to fully appropriate, obligate, authorize and pay all funds and amounts without interruption required for the contract ("Funding Approval"). DAS and each Client Agency agrees that: (i) obtaining Funding Approval is one of DAS's and each Client Agency's material obligations; and (ii) DAS and each Client Agency will treat the contract as vital products and services which are critical to the mission and daily operations of DAS and each Client Agency. In the event DAS or a Client Agency is unable to obtain Funding Approval, DAS or Client Agency (as applicable) agrees that during the remaining term of the contract DAS or the Client Agency will: (w) continue to attempt to obtain Funding Approval as set forth above; (x) place its payment obligations under this agreement ahead of other lower priority obligations; (y) not directly or indirectly contract or appropriate funds for, or in any way obtain, any products or services from a third party that are similar in whole or in part to the Contractor's; and (z) provide the Contractor with timely updates and reports as to the status of funding for the contract. Notwithstanding any limits set forth in this contract on the types or amounts of DAS's or each Client Agency's liabilities, DAS and each Client Agency is liable to and will promptly pay the Contractor for all reasonable costs and expenses incurred by Contractor arising from DAS's or the Client Agency's inability to obtain Funding Approval."

29. **Answer: The State appropriates funding for electricity. This is an essential service for the proper functioning of the State. The suggested language would violate State regulation 4a-52-9(i) which permits the State to go to the next awarded contractor for nonperformance, breach or failure to substitute rejected supplies. As such, the suggested language is unacceptable.**

30. Does the State intend to provide any form of adequate assurance to suppliers, similar to the following provision:

“Adequate Assurance: If the Contractor has reasonable grounds: (i) to believe that a Client Agency’s creditworthiness has become unsatisfactory; or (ii) for insecurity with respect to a Client Agency’s performance under the Contract, the Contractor may require the Client Agency to provide the Contractor with adequate assurance of future performance from the Client Agency (including a letter of credit, a cash deposit, or prepayment) in a form, in an amount, from an issuer, and for a term, all as reasonably satisfactory to the Contractor. The Client Agency shall provide the adequate assurance within five (5) business days of the Contractor’s written request.

**Answer: No**

31. For contracts for the supply of retail electricity there are certain regulatory requirements which Supplier believes are required to be in any contract with Supplier for such services. Can the State clarify whether the Bid Contract or Exhibit A will be modified to include regulatory requirements for electricity supply contracts for accounts in the State of Connecticut related to the following:

- 1) **Supplier and UDC Contact Information.** State and/or DAS may contact Supplier regarding its invoice or other matters concerning this Agreement at Supplier’s State and/or DAS Service Department by toll-free telephone at 800-536-1349, or email at State and/or DAScare@constellation.com. **STATE AND/OR DAS AGREES TO**



**CONTACT ITS UDC IN THE EVENT OF A POWER OUTAGE OR OTHER ELECTRICITY RELATED EMERGENCY AT THE FOLLOWING TELEPHONE NUMBERS:**

| <b>EDC Name</b>       | <b>EDC Abbreviation</b>       | <b>Contact Numbers</b>   |
|-----------------------|-------------------------------|--------------------------|
| <Insert Utility Name> | <Insert Utility Abbreviation> | <Insert Contact Numbers> |

Additional information, including information on consumer rights, may be obtained by contacting the Connecticut Public Utilities Regulatory Authority at (800) 382-4586. State and/or DAS understand that it can review its existing electric generation service charge for purposes of comparison to its rate under this Agreement by going to [http://ctenergyinfo.com/choose\\_entry.htm](http://ctenergyinfo.com/choose_entry.htm) and selecting its rate class information.

- 2) **Certain Warranties.** State and/or DAS each warrant and represent that for any account(s) located in the State of Connecticut, that the electricity supplied under this Agreement is not for use at a residence.
- 3) **Environmental Disclosure Information.** Supplier’s electricity supply may be purchased from any number of sources. Supplier is not purporting to sell power from a specific source—e.g. renewable fuels. Data concerning the generation resource mix and environmental characteristics of Supplier’s electricity products may be provided to the State and/or DAS periodically with its invoices, and is available upon request and may be updated periodically.
- 4) **RIGHT TO RESCIND.** For account(s) located in the State of Connecticut: if the DAS’s aggregate peak load during any 12 month period is 500 kilowatts or less, das has until midnight on the third business day after the later of the day on which the das enters into this agreement or the day on which the das and/or Client Agency receives a copy of the fully executed agreement to cancel this agreement without penalty.

**Answer: This modification will not be made to the ITB or Exhibit A.**