

IPA Brownfield Site Photovoltaic Procurement

Questions & Request for Comments

5 February 2019

In November 2018, the Illinois Power Agency (“IPA” or “Agency”), through its Procurement Administrator NERA Economic Consulting, Inc., conducted a competitive procurement event seeking to procure 80,000 RECs delivered annually through 15-year delivery contracts from qualified new brownfield site photovoltaic projects in Illinois (the “Brownfield Procurement”). No successful bids were received, and thus no projects were selected under this procurement event.¹

The IPA seeks feedback on any barriers that may have limited successful participation in the Brownfield Procurement. Specific questions on which feedback is sought are found below, but commenters need not respond to every question (some may be inapplicable) and should not feel limited by these questions in providing feedback. Commenters are welcome from both bidders in the recent brownfield procurement event as well as other interested parties. Responses to questions will help inform the Agency’s next steps—including whether to petition the Illinois Commerce Commission for authority to conduct another Brownfield Procurement in the coming months.

Responses are due by February 19, 2019 and should be sent to Illinois-RFP@nera.com.

In general, responses will be made public and published on the Procurement Administrator’s website (www.ipa-energyrfp.com). However, should a commenter seek to designate any portion of its response as confidential, that commenter should provide both public and redacted versions. Independent of that designation, if the IPA or its Procurement Administrator determines that a response contains confidential information that should not be disclosed in connection with a competitive procurement event, it reserves the right to provide its own redactions. Responses to specific questions expected to be kept confidential are designated accordingly below.

Should you have any questions or need additional information, please contact Brian Granahan at 312-814-4635 or Brian.Granahan@Illinois.gov.

¹ Please note that the IPA recognizes that some Brownfield Procurement bids may have been received, but may not have been considered for selection due to application of the confidential price benchmark applicable to the procurement event. Given the sensitivity of the benchmark development process, public comments on the reasonableness of the price benchmark are discouraged.

- 1) Section 1-10 of the IPA Act defines a brownfield site photovoltaic project as needing to be located at a site regulated under one of four programs:

- (A) the U.S. EPA's Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA");

- (B) the U.S. EPA's Corrective Action Program of the federal Resource Conservation and Recovery Act, as amended;

- (C) the Illinois EPA's Site Remediation Program; or

- (D) the Illinois EPA's Solid Waste Program.

Is that definition too restrictive?² Are there project types commonly understood as brownfield excluded through this definition? If so, what project types are excluded, and how could this definition be improved?

- 2) In interpreting that definition, the IPA required that any such project needed to demonstrate having been regulated under the applicable program within the last 15 years. Is that requirement too restrictive? If so, what recency requirement (if any) should apply?

- 3) In applying a requirement that any site regulated under the Illinois Site Remediation Program must also demonstrate "actual blight or contamination," the IPA required the following to be submitted:

- (i) proof that the site is also regulated by another Program referenced in Section 1-10 of the IPA Act (if documentation from another Program could not be submitted instead of the documentation from the IEPA Site Remediation Program because it was dated before a date 15 years prior to the Bid Date); or
 - (ii) demonstration of contamination at the site and determination of the need for remediation activities through a site assessment from the U.S. EPA Targeted Brownfields Assessment; or
 - (iii) additional documents from the IEPA Site Remediation Program. If the Bidder is electing to provide additional documents from the IEPA Site Remediation Program, the Bidder must: (a) if the Bidder has not already done so, provide a Remedial Action Plan and such document must demonstrate that concentrations of contaminants at the site exceeded the remediation objectives established for the site and require remediation activities; and (b) if the Bidder has not already done so, provide the Remedial Action Completion Report and a No Further Remediation Letter, or certify that such documents have not been issued. If the Remedial Action Completion Report has been issued, it must be provided; it must state that remediation was indeed conducted at the site, and it must be dated later than the Remedial Action Plan. If a No Further Remediation Letter is Provided it must cover the entirety of the site.

² While the IPA is required by law to use this statutory definition for any subsequent brownfield procurements, feedback is nevertheless sought on whether the definition provides a barrier to participation.

Is this requirement too onerous? If so, what would be a more reasonable approach to demonstrating “actual blight or contamination,” and why?

- 4) Consistent with the requirements applicable to the utility-scale solar RFP, projects participating in the Brownfield Procurement were also required to begin delivering RECs by May 31, 2021, with a possible one-year extension should the bidder meet an increased collateral requirement. Given the additional remediation potentially required to successfully develop a brownfield site PV project, is this requirement too onerous? If so, for brownfield site projects, what is a more realistic timeline between project selection and initial REC deliveries?
- 5) Given the complexity of brownfield site development, the IPA recognizes that brownfield site PV projects could face development and performance risks distinct from those faced by a greenfield site utility-scale solar project. Are the REC delivery contract’s force majeure provisions sufficient to account for such risks? Are there other ways in which the contract could account for brownfield site development risks? If so, how?
- 6) If you bid in the Brownfield Procurement, how did you learn about the opportunity to bid? Are there other venues or mediums through which information could have been published/provided that would have made it easier for you to learn about the procurement event?
- 7) [CONFIDENTIAL] Bids were received in the Brownfield Procurement in late November of 2018, just months before the opening of the Adjustable Block Program, which provides incentives for RECs from new PV projects of up to 2 MW in size. Did the opportunity for incentives through the Adjustable Block Program impact your participation in the Brownfield Procurement? Did it impact your bid price?
- 8) [CONFIDENTIAL] If you bid in the Brownfield Procurement—if the IPA were to conduct a second Brownfield Procurement in 2019, would you bid again?