

**REQUEST FOR PROPOSALS**

**Act 129 Statewide Evaluator**

**ISSUING OFFICE**

**Pennsylvania Public Utility Commission**

**Bureau of Technical Utility Services**

**RFP-2012-8**

**DATE OF ISSUANCE**

**November 30, 2012**

**REQUEST FOR PROPOSALS FOR  
ACT 129 Statewide Evaluator**

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## CALENDAR OF EVENTS

The Commission will make every effort to adhere to the following schedule:

Activity	Responsibility	Date
Deadline to submit Questions via email to the Issuing Officer Darren Gill at dgill@pa.gov.	Potential Proposers	December 10, 2012
Proposer's Conference on Thursday, December 13, 2012 at 1 p.m. in Executive Chambers, 3 <sup>rd</sup> Floor, Commonwealth Keystone Building, 400 North St., Harrisburg PA 17120. The Issuing Officer will take questions.	Issuing Office/Potential Proposers	December 13, 2012 1 p.m.
Answers to all Potential Proposer questions posted to the Commission website no later than this date at <a href="http://www.puc.state.pa.us/electric/Act_129_info.aspx">http://www.puc.state.pa.us/electric/Act_129_info.aspx</a>	Issuing Office	December 21, 2012
Please monitor website for all communications regarding the RFP on an ongoing basis. <a href="http://www.puc.state.pa.us/electric/Act_129_info.aspx">http://www.puc.state.pa.us/electric/Act_129_info.aspx</a>	Potential Proposers	Ongoing
Sealed proposal must be received by the Issuing Office at <b>address indicated in Section I-11 by <u>3 p.m.</u></b>	Proposers	January 11, 2013 <b><u>3 p.m.</u></b>

**REQUEST FOR PROPOSALS**

**ACT 129 STATEWIDE EVALUATOR**

**PART I**

**GENERAL INFORMATION FOR THE CONTRACTOR**

**I-1. PURPOSE.** This Request for Proposals (“RFP”) provides interested potential Contractors (also “Proposers”) with sufficient information to enable them to prepare and submit proposals for consideration by the Pennsylvania Public Utility Commission (“Commission” or “PUC”) to select the Act 129 Statewide Evaluator (“Statewide Evaluator” or “Contractor”). The Commission is seeking a Statewide Evaluator for the Energy Efficiency and Conservation Programs of the large Pennsylvania Electric Distribution Companies (“EDCs”). The EDCs are: Duquesne Light Company, Metropolitan Edison Company, PECO Energy Company, Pennsylvania Electric Company, Pennsylvania Power Company, PPL Electric Utilities Corporation, and West Penn Power Company.

**I-2. ISSUING OFFICE.** This RFP is issued by the Pennsylvania Public Utility Commission’s Bureau of Technical Utility Services (“TUS” or “Issuing Office”). While the Contract is between the Commission, the Contracting Entity and the Contractor, the final selection, control and approval for payment of the Statewide Evaluator is to be made by the Commission. The Contracting Entity is funded by the EDCs. The sole point of contact in the Commonwealth for this RFP shall be the Issuing Officer for this RFP, Darren Gill, Deputy Director of the Bureau of Technical Utility Services, Pennsylvania Public Utility Commission, P.O. Box 3265, Harrisburg, PA 17105-3265, telephone number (717) 783-5244, and email dgill@pa.gov. Please refer all inquiries to the Issuing Officer.

**I-3. ESTIMATED BUDGET.** The Commission estimates the budget for this Contract as follows for the purpose of aiding in the submission of Proposals. These estimates are not meant to establish cost “minimums or maximums.”

Years 1, 2, 3 in Total	\$6.7 million
Logging/Metering Studies	\$1.1 million
Baseline Studies	\$2.1 million
EE Market Potential Study	\$1.3 million

Total Estimate: \$11.2 million

Unused budget amounts for earlier years will be carried over to later years.

**I-4. PROBLEM STATEMENT.**The Commission has been charged by the Pennsylvania General Assembly pursuant to Act 129 of 2008 (“Act 129”) with establishing an energy efficiency and conservation program. 66 Pa.C.S. §§ 2806.1 and 2806.2. The energy efficiency and conservation program requires each EDC with at least 100,000 customers to adopt a plan to reduce energy demand and consumption within its service territory. 66 Pa.C.S. § 2806.1. In order to fulfill this obligation, on August 2, 2012, the Commission entered an Implementation Order at Docket No. M-2012-2289411. As part of the Implementation Order and Act 129, the

Commission seeks a Statewide Evaluator to evaluate the EDCs' Phase II energy efficiency and conservation programs.

**I-5. TYPE OF CONTRACT.** It is proposed that if the Issuing Office enters into a contract as a result of this RFP, it will be a contract containing the proposed contract Terms and Conditions as shown in the Draft Contract found at Appendix D. This RFP and all exhibits, appendices, addenda, and other attachments thereto, and the Proposal of the Proposer who is awarded the contract and all exhibits, appendices, addenda, and other attachments thereto are incorporated into the contract by reference.

Total payments under this contract will not exceed the total cost quoted in the proposal. The total cost may be exceeded only if the Contractor, the Contracting Entity, or the Commission's Project Officer, prior to incurring such additional expenses, files a Petition with the Commission seeking approval of such additional expenses and the Commission approves, before the expenses are incurred, the Contract expenditures up to that date and such additional expenditures.

**I-6. REJECTION OF PROPOSALS.** The Commission reserves the right to reject any and all proposals or portions thereof received as a result of this RFP, when it is in the best interest of the Commission.

**I-7. INCURRING COSTS.** Neither the Commission nor the Contracting Entity are liable for any costs incurred by Proposers prior to issuance of a Contract. The Proposer shall not begin compensable work until so notified by the Commission's Project Officer.

**I-8. PRE-PROPOSAL CONFERENCE.** The Issuing Office will hold a Pre-proposal Conference as specified in the Calendar of Events. The purpose of this conference is to provide opportunity for the Proposers to ask questions to clarify the RFP. Proposers may also submit written questions prior to the Pre-proposal Conference in accordance with Part I, Section I-9. Proposers may also ask questions at the Pre-proposal Conference. The Pre-proposal Conference is for information only. Any verbal responses furnished during the conference will not be binding until they have been verified, in writing, by the Issuing Office. All questions and written answers will be posted on the PUC website at [http://www.puc.state.pa.us/electric/Act\\_129\\_info.aspx](http://www.puc.state.pa.us/electric/Act_129_info.aspx) by the date stated in the Calendar of Events and will become an addendum to, and shall become part of, this RFP and the Contract. Prospective Proposers can attend the Pre-proposal conference by teleconference. Please submit a request for the teleconference information to the Issuing Officer in accordance with Part I, Section I-9. Attendance at the pre-proposal conference is not mandatory.

**I-9. QUESTIONS & ANSWERS.** If a Proposer has any questions regarding this RFP, the Proposer must submit the questions by email (with the subject line "RFP-2012-8 Statewide Evaluator RFP Question") to the Issuing Officer no later than the date indicated in the Calendar of Events. The Proposer shall not attempt to contact the Issuing Officer by any other means. The Issuing Officer shall post the answers to the questions on the PUC website by the date stated in the Calendar of Events.

All questions and responses as posted on the PUC website are an addendum to, and part of, this RFP and the Contract and are hereby incorporated herein by reference. Each Proposer shall be responsible to monitor the PUC website for new or revised RFP information. The Issuing Office shall not be bound by any verbal information nor shall it be bound by any written information that is not either contained within the RFP or formally issued as an addendum by the Issuing Office. Questions do not constitute a protest of the RFP. The required protest process for Commonwealth procurements is described on the Department of General Services (“DGS”) website at <http://www.dgs.state.pa.us>.

**I-10. ADDENDA TO THE RFP.** If the Issuing Office deems it necessary to revise any part of this RFP before the proposal response date, the Issuing Office will post an addendum to the PUC website. It is the Proposer’s responsibility to periodically check the PUC website for any new information or addenda to the RFP. Answers to the questions asked during the Question & Answer period also will be posted to the website as an addendum to the RFP.

**I-11. RESPONSE DATE.** To be considered, the proposal or any addendum thereto must arrive at the Issuing Office on or before the time and date specified in the Calendar of Events via the appropriate address listed below.

**U.S. Mail First Class Delivery Address**

Darren Gill, Deputy Director  
Bureau of Technical Utility Services  
Pennsylvania Public Utility Commission  
P.O. Box 3265  
Harrisburg, Pennsylvania 17105-3265

**Overnight Delivery Service Address**

Darren Gill, Deputy Director  
Bureau of Technical Utility Services  
Pennsylvania Public Utility Commission  
3<sup>rd</sup> Floor West, Commonwealth Keystone Building  
400 North Street  
Harrisburg, Pennsylvania 17120

Proposers delivering proposals by any form of delivery service should allow for delivery time to insure timely receipt of their proposals. The Issuing Office will not accept proposals via email or facsimile transmission. If, due to inclement weather, natural disaster, or any other cause, the Commonwealth office location to which proposals are to be sent is closed on the proposal response date, the deadline for submission will be automatically extended until the next Commonwealth business day on which the office is open, unless the Issuing Office otherwise notifies Proposers. The hour for submission of proposals shall remain the same. **Proposals received after the time and date specified in the Calendar of Events will be rejected, unopened, and not considered regardless of the reason for the late submission.**

**I-12. PROPOSALS.** To be considered, Proposers must submit a complete response to this RFP, using the format provided in Part II. No other distribution of proposals will be made by the Proposer. Proposals must be signed by an official authorized to bind the Proposer to its provision. For this RFP, the proposal must remain valid for at least 120 days. Moreover, except as otherwise noted herein, the contents of the proposal of the selected contractor will become contractual obligations of the contractor if a contract among the Commission, the Contracting Entity, and the successful contractor is entered. Notwithstanding anything herein to the contrary, if the winning Proposal conflicts with the terms and conditions of the fully executed and approved written contract between the Commission, the Contracting Entity, and the successful Proposer, the following order of precedence shall apply: 1. Contract (including the RFP); 2. Proposal.

If the Issuing Office selects the Proposer's proposal for award, the contents of the selected Proposer's proposal will become, except to the extent the contents are changed through Best and Final Offers or negotiations, contractual obligations. The information in the proposal will become a public record upon contract execution.

Each Proposer submitting a proposal specifically waives any right to withdraw or modify it, except that the Proposer may withdraw its proposal by written notice received at the Issuing Office's address for proposal delivery prior to the exact hour and date specified for proposal receipt. A Proposer or its authorized representative may withdraw its proposal in person prior to the exact hour and date set for proposal receipt, provided the withdrawing person provides appropriate identification and signs a receipt for the proposal. A Proposer may modify its submitted proposal prior to the exact hour and date set for proposal receipt only by submitting a new sealed proposal or sealed modification which complies with the RFP requirements.

The proposal should set forth broadly, but concisely, the work that will be undertaken in response to the requirements in Part IV of this RFP. It should be specifically tailored to the tasks indicated and should be in sufficient depth to afford the Commission a thorough understanding of the work plan.

**I-13. SMALL DIVERSE BUSINESS INFORMATION.** The Issuing Office encourages participation by small diverse businesses as prime contractors, and encourages all prime contractors to make a significant commitment to use small diverse businesses as subcontractors and suppliers.

A Small Diverse Businesses is a DGS-certified minority-owned business, woman-owned business, service-disabled veteran-owned business or veteran-owned business, or United States Small Business Administration-certified 8(a) small disadvantaged business concern, that qualifies as a small business.

A small business is a business in the United States which is independently owned, not dominant in its field of operation, employs no more than 100 full-time or full-time equivalent employees, and earns less than \$20 million in gross annual revenues (\$25 million in gross annual revenues for those businesses in the information technology sales or service business).

Questions regarding this Program can be directed to:

Department of General Services  
Bureau of Small Business Opportunities  
Room 611, North Office Building  
Harrisburg, PA 17125  
Phone: (717) 783-3119  
Fax: (717) 787-7052  
Email: [gs-bmwbo@state.pa.us](mailto:gs-bmwbo@state.pa.us)  
Website: [www.dgs.state.pa.us](http://www.dgs.state.pa.us)

DGS's directory of Bureau of Small Business Opportunities (BSBO)-certified minority-, women-, veteran- and service disabled veteran-owned businesses can be accessed from:  
[http://www.portal.state.pa.us/portal/server.pt/community/under\\_construction\\_-\\_bureau\\_of\\_minority\\_and\\_women\\_business\\_opportunities/20986](http://www.portal.state.pa.us/portal/server.pt/community/under_construction_-_bureau_of_minority_and_women_business_opportunities/20986). The federal vendor database can be accessed at <http://www.ccr.gov> by clicking on Dynamic Small Business Search (certified companies are so indicated).

**I-14. ECONOMY OF PREPARATION.** The proposal should be a straight-forward, concise description of the Proposer's ability to meet the requirements of the RFP.

**I-15. ALTERNATE PROPOSALS.** The Issuing Office has identified the basic approach to meeting its requirements, allowing Proposers to be creative and propose their best solution to meeting these requirements. However, in order to allow for evaluation of the proposals, the Issuing Office will not accept alternate proposals that do not satisfy the stated work requirements.

**I-16. DISCUSSIONS FOR CLARIFICATION.** Proposers who submit a proposal may be required to make an oral or written clarification of their proposal to the Commission's Evaluation Committee to ensure thorough mutual understanding and Proposer responsiveness to the solicitation requirements. Only the Issuing Office may initiate requests for clarification.

**I-17. PRIME CONTRACTOR RESPONSIBILITIES.** The prime contractor ("Contractor") will be required to assume responsibility for all services offered in its proposal including those of any subcontractors. Further, the Commission and the Contracting Entity will consider the prime contractor to be the sole point of contact with regard to contractual matters.

**I-18. BEST AND FINAL OFFERS.**

- A. While not required, the Issuing Office reserves the right to conduct discussions with Offerors for the purpose of obtaining "best and final offers." To obtain best and final offers from Offerors, the Issuing Office may do one or more of the following, in any combination and order:

1. Schedule oral presentations;
  2. Request revised proposals;
  3. Conduct a reverse online auction; and
  4. Enter into pre-selection negotiations.
- B. The following Offerors will **not** be invited by the Issuing Office to submit a Best and Final Offer:
1. Those Offerors, which the Issuing Office has determined to be not responsible or whose proposals the Issuing Office has determined to be not responsive.
  2. Those Offerors, which the Issuing Office has determined in accordance with **Part III**, from the submitted and gathered financial and other information, do not possess the financial capability, experience or qualifications to assure good faith performance of the contract.
  3. Those Offerors whose score for their technical submittal of the proposal is less than 70% of the total amount of technical points allotted to the technical criterion.
- The issuing office may further limit participation in the best and final offers process to those remaining responsible offerors which the Issuing Office has, within its discretion, determined to be within the top competitive range of responsive proposals.
- C. The Evaluation Criteria found in **Part III**, shall also be used to evaluate the Best and Final offers.
- D. Price reductions offered through any reverse online auction shall have no effect upon the Offeror's Technical Submittal. Dollar commitments to Small Diverse Businesses can be reduced only in the same percentage as the percent reduction in the total price offered through any reverse online auction or negotiations.

**I-19. EXAMPLES OF PREVIOUS WORK.** Proposers who submit proposals must, as necessary, provide copies of recent previous relevant work products for review by the staff. These work products should be submitted at the same time as the proposal and may be redacted, as necessary, to preserve confidentiality.

**I-20. NEWS RELEASE.** Proposers shall not issue news releases, Internet postings, advertisements or any other public communications pertaining to this Project without prior written approval of the Issuing Office, and then only in coordination with the Issuing Office.

**I-21. RESTRICTION OF CONTACT.** From the issue date of this RFP until the Commission selects a proposal for award, the Issuing Officer is the sole point of contact concerning this RFP. Any violation of this condition may be cause for the Issuing Office to reject the offending Proposer's proposal. If the Issuing Office later discovers that the Proposer has engaged in any violations of this condition, the Issuing Office may reject the offending Proposer's proposal or rescind its contract award. Proposers must agree not to distribute any part of their proposals beyond the Issuing Office. A Proposer who shares information contained in its

proposal with other Commonwealth personnel and/or competing Proposer personnel may be disqualified.

**I-22. DISCLOSURE OF PROPOSAL CONTENTS.**

a. Confidential Information. The Commonwealth is not requesting, and does not require, confidential proprietary information or trade secrets to be included as part of Proposers' submissions in order to evaluate proposals submitted in response to this RFP. Accordingly, except as provided herein, Proposers should not label proposal submissions as confidential or proprietary or trade secret protected. Any Proposer who determines that it must divulge such information as part of its proposal must submit the signed written statement described in subsection c. below and must additionally provide a redacted version of its proposal, which removes only the confidential proprietary information and trade secrets, for required public disclosure purposes.

b. Commonwealth Use. All material submitted with the proposal shall be considered the property of the Commonwealth of Pennsylvania and may be returned only at the Issuing Office's option. The Commonwealth has the right to use any or all ideas not protected by intellectual property rights that are presented in any proposal regardless of whether the proposal becomes part of a contract. Notwithstanding any Proposer copyright designations contained on proposals, the Commonwealth shall have the right to make copies and distribute proposals internally and to comply with public record or other disclosure requirements under the provisions of any Commonwealth or United States statute or regulation, or rule or order of any court of competent jurisdiction.

c. Public Disclosure. Public records requests for proposals are governed by and shall be handled in the following manner:

After the award of a contract pursuant to this RFP, all proposal submissions, including information in unsuccessful proposals, are subject to disclosure in response to a request for public records made under the Pennsylvania Right-to-Know-Law, 65 P.S. § 67.101, et seq. If a proposal submission contains confidential proprietary information or trade secrets, a signed written statement to this effect must be provided with the submission in accordance with 65 P.S. § 67.707(b) for the information to be considered exempt under 65 P.S. § 67.708(b)(11) from public records requests. Financial capability information submitted in response to Part II of this RFP is exempt from public records disclosure under 65 P.S. § 67.708(b)(26).

Proposers must designate all materials submitted to the Commission that are confidential or proprietary, or contain a trade secret, including financial information submitted to demonstrate the Proposer's economic capability ("confidential information"). Confidential information should be submitted in a separate document which is clearly marked as "confidential information" at the top of each page. A public version of such a confidential document (i.e., a redacted version) should be submitted to the extent practicable and clearly marked as "public" at the top of each page. The Commission in its discretion may rely upon Proposers' designation of such confidential information when responding to public requests for disclosure of information pursuant to the Pennsylvania *Right-to-Know Law*, 65 P.S. § 67.101 et seq.

In addition, as part of the selection process the proposals will be discussed with the EDCs by the Commission staff. The EDCs will be instructed to maintain strict confidentiality.

**I-23. DEBRIEFING CONFERENCES.** Proposers whose proposals are not selected will be notified of the name of the selected Proposer and given the opportunity to be debriefed if such request is made within seven days after the Proposer is notified of the award of the contract. A request for debriefing will not alter the deadline for filing a Protest. The Issuing Office will schedule the time and location of the debriefing. A Proposer's exercise of the opportunity to be debriefed does not constitute the filing of a protest.

**I-24. TERM OF CONTRACT.** The term of the contract will commence on the Effective Date, which date shall be fixed by the Issuing Office after the contract has been fully executed by the Proposer, the Contracting Entity and the Commission and all approvals required by the Commonwealth contracting procedures have been obtained. The selected Proposer shall not start the performance of any work prior to the Effective Date of the contract and neither the Commission nor the Contracting Officer shall be liable to pay the selected Proposer for any service or work performed or expenses incurred before the Effective Date of the contract.

The term of the Contract will be from Effective Date of the Contract (estimated to be March 1, 2013) until February 28, 2017.

Contractors should submit bids for the entire period from March 1, 2013 (the anticipated Effective Date of the Contract) through February 28, 2017, an estimated 48 months.

If a Proposer's proposal is accepted, the Proposer is obligated to provide services for the entire contract term.

**I-25. COMMISSION PARTICIPATION.** A Project Officer will be designated by the Commission to coordinate the activities of the contractor with the Commission to insure satisfactory and timely performance of the contract when awarded. The Commission's Project Officer will be Darren Gill, Bureau of Technical Utility Services, who also acts as the Issuing Officer for this RFP. The Project Officer or his/her designate(s) will be the sole source of contact for the Contractor in any discussions with the Commission.

The Commission's staff will take an active part in the Statewide Evaluator's work and the Proposer should be prepared to work with Commission Staff throughout the course of the Statewide Evaluator Project. The Commission will rely upon its staff to answer various questions from time to time about the EDCs' conservation programs. It will be necessary, therefore, that the Commission's staff be closely involved in the work of the Contractor. This will include attending meetings, reviewing analytical procedures, and monitoring the Statewide Evaluator's progress as to scope, budget, work plans, time, etc. In any event, it is expected that the individuals assigned to each task area will frequently discuss his/her progress informally and directly with the Commission's Project Officer or his/her designate(s). The Proposer's willingness to work with the Commission's staff in the described manner is a material obligation of the Contract and should be explicitly stated in the proposal.

**I-26. PROPOSER'S REPRESENTATIONS AND AUTHORIZATIONS.** By submitting its proposal, each Offeror understands, represents, and acknowledges that:

- A. All of the Offeror's information and representations in the proposal are material and important, and the Issuing Office may rely upon the contents of the proposal in awarding the contract(s). The Commonwealth shall treat any misstatement, omission or misrepresentation as fraudulent concealment of the true facts relating to the Proposal submission, punishable pursuant to 18 Pa. C.S. § 4904.
- B. The Offeror has arrived at the price(s) and amounts in its proposal independently and without consultation, communication, or agreement with any other Offeror or potential offeror.
- C. The Offeror has not disclosed the price(s), the amount of the proposal, nor the approximate price(s) or amount(s) of its proposal to any other firm or person who is an Offeror or potential offeror for this RFP, and the Offeror shall not disclose any of these items on or before the proposal submission deadline specified in the Calendar of Events of this RFP.
- D. The Offeror has not attempted, nor will it attempt, to induce any firm or person to refrain from submitting a proposal on this contract, or to submit a proposal higher than this proposal, or to submit any intentionally high or noncompetitive proposal or other form of complementary proposal.
- E. The Offeror makes its proposal in good faith and not pursuant to any agreement or discussion with, or inducement from, any firm or person to submit a complementary or other noncompetitive proposal.
- F. To the best knowledge of the person signing the proposal for the Offeror, the Offeror, its affiliates, subsidiaries, officers, directors, and employees are not currently under investigation by any governmental agency and have not in the last **four** years been convicted or found liable for any act prohibited by State or Federal law in any jurisdiction, involving conspiracy or collusion with respect to bidding or proposing on any public contract, except as the Offeror has disclosed in its proposal.
- G. To the best of the knowledge of the person signing the proposal for the Offeror and except as the Offeror has otherwise disclosed in its proposal, the Offeror has no outstanding, delinquent obligations to the Commonwealth including, but not limited to, any state tax liability not being contested on appeal or other obligation of the Offeror that is owed to the Commonwealth.
- H. The Offeror is not currently under suspension or debarment by the Commonwealth, any other state or the federal government, and if the Offeror cannot so certify, then it shall submit along with its proposal a written explanation of why it cannot make such certification.

- I. The Offeror has not made, under separate contract with the Issuing Office, any recommendations to the Issuing Office concerning the need for the services described in its proposal or the specifications for the services described in the proposal.
- J. Each Offeror, by submitting its proposal, authorizes Commonwealth agencies to release to the Commonwealth information concerning the Offeror's Pennsylvania taxes, unemployment compensation and workers' compensation liabilities.
- K. Until the selected Offeror receives a fully executed and approved written contract from the Issuing Office, there is no legal and valid contract, in law or in equity, and the Offeror shall not begin to perform.

**I-27. NOTIFICATION OF SELECTION.** The Issuing Office will notify the selected Proposer of its selection for negotiation after the Commission has approved the Evaluation Committee's recommendation, taking into consideration all of the evaluation factors, the proposal that is the most advantageous to the Commission.

**I-28. RFP PROTEST PROCEDURE.** The RFP Protest Procedure is on the DGS website at <http://www.dgsweb.state.pa.us/comod/ProtestProcedures.doc>. A protest by a party who did not submit a proposal must be filed within seven (7) calendar days after the protesting party knew or should have known of the facts giving rise to the protest, but no later than seven (7) days after the proposal submission deadline specified in the RFP Calendar of Events. Proposers who did submit a proposal may file a protest within seven (7) calendar days after the protesting Proposer knew or should have known of the facts giving rise to the protest, but in no event may an Offeror file a protest later than seven days after the date of the notice of award. The date of filing is the date of receipt of the protest. A protest must be filed in writing with the Issuing Office as provided in Section I-11. To be timely, the protest must be received by 4:00 p.m. on the seventh day.

**I-29. USE OF ELECTRONIC VERSIONS OF THE RFP.** This RFP may be made available by electronic means. If a Proposer electronically accepts the RFP, the Proposer acknowledges and accepts full responsibility to insure that no changes are made to the RFP. In the event of a conflict between a version of the RFP in the Proposer's possession and the Issuing Office's version of the RFP, the Issuing Office's version shall govern.

**I-30. PAYMENT.** Payment will be monthly. Contractor will submit invoices to the Project Officer and EEC Evaluations for incurred expenses of the past month on or after the fifteenth of the month. Contractor may submit an invoice earlier than the fifteenth of the month by requesting and obtaining permission from the Commission's Project Officer. Contractor may not bill for expenses that have not been incurred. Indicating expenses in the manner of the tasks or groups of tasks that were put forth in the Proposal, Invoices will itemize the employees who worked during the month, their hours and billable rates, as well as itemizing travel, lodging, and meal expenses. Materials and other expenses exceeding \$250 will be itemized; remaining expenses need not be itemized. Along with monthly invoices, Contractor shall also provide monthly a statement of the cash flow position for each task or group of tasks, indicating the

amount spent to date and the amount of the Contractor's budget remaining for each task or group of tasks. Contractor will also provide an estimate of the expenses for the next month for each task or group of tasks. Invoices will detail EDC-specific charges (where it is possible for the Statewide Evaluation Team to identify such EDC-specific charges) as well as general charges that are to be shared by all EDCs.

The Project Officer will have primary responsibility to review and approve the invoices. The EDCs (or their designees) shall review the invoices in a reasonable manner and advise the Project Officer of any issues related to the invoices. The Project Officer will review the claimed expenses within 30 days and shall notify the Contracting Entity Representative in writing of the approved expenses. The Contracting Entity may rely upon the Project Officer's approval of expenses. The Contracting Entity Representative shall then make prompt payment directly to the Contractor within 10 days of receipt of the Project Officer's written approval.

**I-31. MINIMUM QUALIFICATIONS.** Proposers must have at least the following qualifications to be considered for selection:

- Key staff members must have demonstrated experience in evaluating or implementing energy efficiency and conservation programs for electric utilities.
- Demonstrated organizational, financial, data tracking and reporting abilities that will adequately support the work load and demands associated the Statewide Evaluation Program.
- Demonstrated sufficient infrastructure, history and experience to handle the required work and manage sub-contractors, if applicable.
- Demonstrated ability to provide independent, objective evaluation reviews of energy efficiency and conservation programs.

**I-32. KEY PERSONNEL.** Contractor agrees to notify the Commission at least 30 days in advance of a change in personnel used by the Contractor to perform Contract work, including changes in personnel at any subcontractors. Commission reserves the right to require Commission approval of changes in the Contractor's key personnel. Changes in key personnel should also include a transition period of appropriate length to ensure continuity of operations.

## **PART II**

### **INFORMATION REQUIRED FROM PROPOSERS**

Proposer must submit their Proposals in the format, including heading descriptions, outlined below. Prepare consecutively numbered pages with index tabs for each section outlined below. To be considered, the Proposal must respond to all requirements in this part of the RFP. Any other information thought to be relevant, but not applicable to the enumerated categories, should be provided as an appendix to the proposal. **All (1) monetary amounts indicating costs**

**relating to this Proposal and (2) all Small Diverse Business data should be kept separate from and not included in the Technical Submittal, as indicated below.** Each proposal shall consist of three (3) separately sealed submittals. The submittals are as follows:

- a) **Technical Submittal**, which includes the following: the technical portion of the proposal (10 copies), in response to Sections II-1 through II-6 and II-9 hereof, the Noncollusion Affidavit (1 copy) in response to Section I-26 hereof, and prior work samples (1 copy) in response to Section I-19 hereof;
- b) **Small Diverse Business Submittal** (2 copies), in response to Sections II-7 hereof (in a separately sealed envelope); and
- c) **Cost Submittal** (2 copies), in response to Sections II-8 and II-9 hereof (in a separately sealed envelope, separate from the disadvantaged business sealed envelope).

**NOTE:** The Demand Response Market Potential Study optional work should have a **separate cost proposal listing** and **not be included in the overall dollar value for the project total cost proposal.**

In addition to the paper copies of the technical portion of the proposal, Proposers shall submit one complete and exact copy of the technical proposal on CD-ROM or Flash drive in Microsoft Office or Adobe pdf format.

The Issuing Office reserves the right to request additional information which, in the Issuing Office's opinion, is necessary to assure that the Proposer's competence, number of qualified employees, business organization, and financial resources are adequate to perform according to the contract.

The Issuing Office may make such investigations as deemed necessary to determine the ability of the Proposer to perform the work, and the Proposer shall furnish to the Issuing Office all such information and data for this purpose as requested by the Issuing Office. The Issuing Office reserves the right to reject any Proposal if the evidence submitted by, or investigation of, such Proposer fails to satisfy the Issuing Office that such Proposer is properly qualified to carry out the obligations of the contract and to complete the work specified.

### **Technical Submittal**

**II-1. SECTION 1: STATEMENT OF THE PROBLEM.** State in succinct terms your understanding of the problem presented or services required by this RFP.

**II-2. SECTION 2: MANAGEMENT SUMMARY.** Include a narrative description of the proposed effort and a list of the items to be delivered or services to be provided.

**II-3. SECTION 3: WORK PLAN.** Provide your work plan in terms of the tasks indicated in the scope of work. Your work plan for each task should be in sufficient depth to afford the Commission a thorough understanding of your work plan for that task. You may group individual tasks into larger groups of tasks in each Phase as long as it is clear which tasks are being grouped together. A written description of how you propose to document the information that will be generated/collected during your work must also be included. The work plan should list the employees and their anticipated work hours for each task or group of tasks, but **not include their billable rate, as cost information is to be provided separately** (See II-8). Please pay particular attention to indicating the leadership/project management staff, and ensure that adequate project management staff is provided.

**II-4. SECTION 4: PRIOR EXPERIENCE.** Submit a statement of similar work conducted by the Proposer. Work completed in the previous five (5) years will carry greater weight than older work. This would also apply to any subcontractors. Prior work experience should be similar work done by individuals who will be assigned to this project and/or similar projects completed by your firm. Projects referred to should be identified and the name of the client shown, including the name, address, email and phone number of the responsible official of the client, company or agency who may be contacted. Copies of prior work reports and deliverables may be also submitted.

**II-5. SECTION 5: PERSONNEL.** Include the names of all personnel, including personnel employed by any subcontractors, – executive, professional, management analysts, systems analysts, auditors, staff consultants, subcontractors, etc., - that will be engaged in the work and the services they will perform. Please pay particular attention to indicating the leadership/project management staff, and ensure that adequate project management staff is provided. You must include a resume indicating their education and specific experience/role(s) in performing similar work (especially work relating to electric utilities). The Commission expects proposers to reflect a balance of staff resources at different experience levels. In addition, leadership personnel employed by the "finalist" shall be subject to personal interviews by Commission staff, if requested. These interviews would be conducted at the Commission offices in Harrisburg prior to the final selection of a contractor. For the Project Manager and leadership personnel, please list existing projects and project end times.

**II-6. SECTION 6: STATEMENT OF POTENTIAL CONFLICTS OF INTEREST.** The Proposer shall identify any relationships between itself or its employees and the EDCs or their employees. This would include any work currently being performed by the Proposer or any work performed by the Proposer during the past five (5) years related to any of the EDCs, including work performed in a proceeding which was adversarial to any of the EDCs. If there have been no such relationships, a statement to that effect is to be included in the proposal. Prior to final selection of the winning Proposer, the EDCs will be consulted as to conflicts of interest. (See also III-5.)

### **Small Diverse Business Submittal**

**II-7. SMALL DIVERSE BUSINESS PARTICIPATION SUBMITTAL.** To receive credit for being a Small Diverse Business or for subcontracting with a Small Diverse Business

(including purchasing supplies and/or services through a purchase agreement), an Offeror must include proof of Small Diverse Business qualification in the Small Diverse Business participation submittal of the proposal, as indicated below:

1. A Small Diverse Business certified by BSBO as an MBE/WBE/VBE/SDVBE must provide a photocopy of their active BSBO certificate. A Small Diverse Business certified by BSBO in more than one category should indicate for which category it wishes its participation to be counted for program recordkeeping purposes.
  2. Businesses certified by the U.S. Small Business Administration pursuant to Section 8(a) of the Small Business Act (15 U.S.C. § 636(a)) as an 8(a) Small Disadvantaged Businesses must submit proof of U.S. Small Business Administration certification. The owners of such businesses must also submit proof of United States citizenship.
  3. All businesses claiming Small Diverse Business status, whether as a result of BSBO certification, or U.S. Small Business Administration certification as an 8(a) small disadvantaged business, must attest to the fact that the business has no more than 100 full-time or full-time equivalent employees. This can be accomplished by including copies of IRS Form 941s or a letter from the small diverse business attesting to the number of employees.
  4. All businesses claiming Small Diverse Business status, whether as a result of BSBO certification, or U.S. Small Business Administration certification as an 8(a) small disadvantaged business, must submit proof that their gross annual revenues are less than \$20,000,000 (\$25,000,000 for those businesses in the information technology sales or service business). This can be accomplished by including a recent tax return, audited financial statement or a letter from a CPA attesting to the annual revenues.
- A. In addition to the above verifications, the Offeror must include in the Small Diverse Business participation submittal of the proposal the following information:
1. **All** Offerors must include a numerical percentage which represents the total percentage of the work (as a percentage of the total cost in the Cost Submittal) to be performed by the Offeror and not by subcontractors and suppliers.
  2. **All** Offerors must include a numerical percentage which represents the total percentage of the total cost in the Cost Submittal that the Offeror commits to paying to Small Diverse Businesses (SDBs) as subcontractors. To support its total percentage SDB subcontractor commitment, Offeror must also include:
    - a) The percentage and dollar amount of each subcontract commitment to a Small Diverse Business;

- b) The name of each Small Diverse Business. The Offeror will not receive credit for stating that after the contract is awarded it will find a Small Diverse Business.
  - c) The services or supplies each Small Diverse Business will provide, including the timeframe for providing the services or supplies.
  - d) The location where each Small Diverse Business will perform services.
  - e) The timeframe for each Small Diverse Business to provide or deliver the goods or services.
  - f) A signed subcontract or letter of intent for each Small Diverse Business. The subcontract or letter of intent must identify the specific work, goods or services the Small Diverse Business will perform and how the work, goods or services relates to the project.
  - g) The name, address and telephone number of the primary contact person for each Small Diverse Business.
3. The total percentages and each SDB subcontractor commitment will become contractual obligations once the contract is fully executed.
4. The name and telephone number of the Offeror's project (contact) person for the Small Diverse Business information.
- B. The Offeror is required to submit **two** copies of its Small Diverse Business participation submittal. The submittal shall be clearly identified as Small Diverse Business information and sealed in its own envelope, separate from the remainder of the proposal.
- C. A Small Diverse Business can be included as a subcontractor with as many prime contractors as it chooses in separate proposals.
- D. An Offeror that qualifies as a Small Diverse Business and submits a proposal as a prime contractor is not prohibited from being included as a subcontractor in separate proposals submitted by other Offerors.

**Cost Submittal**

**II-8. COST AND PRICE ANALYSIS.** Cost Summary. The overall cost for the entire contract must be provided. A breakdown of the costs for each year is broken down as follows:

- Year 1 – Contract effective date (estimated to be 3/1/13) through June 30, 2014 (16 months);
- Year 2 – July 1, 2014 through June 30, 2015 (12 months);
- Year 3 – July 1, 2015 through February 28, 2017 (20 months).

For each year, provide cost information by task or group of tasks for each year as indicated above. For each task or group of tasks:

- Direct Labor Costs. List of all employees who will be assigned to work on the project by indicating their hours and billable rate. Itemize to show the following for each category of personnel with a different hourly rate:

Category (e.g., partner, project manager, analyst, senior auditor.)

Estimated hours.

Rate per hour.

Total cost for each category and for all direct labor costs.

- Travel and Subsistence Costs. Itemize transportation, lodging and meals per diem costs separately. Travel and subsistence costs must conform with the requirements of the most current version of Commonwealth Management Directive 230.10, *Travel and Subsistence Allowances*. Your firm's standard practices for employee travel expenses such as meals, entertainment, transportation, and lodging must also be provided.
- Consultant Costs. Itemize as indicated above.
- Subcontract Costs. Itemize as indicated above.
- Cost of Supplies and Materials. Itemize.
- Other Direct Costs. Itemize.
- General Overhead Costs. Overhead includes two major categories of cost: operations overhead and general and administrative overhead. Operations overhead includes costs that are not 100% attributable to the service being completed, but are generally associated with the recurring management or support of the service. General and administrative overhead includes salaries, profits, equipment and other costs related to headquarters management external to the service, but in support of the activity being completed. Specify what specific items are included and the rates used.
- Provide a September cost proposal for the contingency of a Demand Response Market Potential Study. Do not include the cost of the contingency study in the overall cost proposal.

**This portion of the proposal shall be clearly identified as the Cost Proposal with two copies sealed in an envelope, separate from the remainder of the proposal.** Please refer to Section I-22 regarding confidential information. Proposers should direct in writing to the Issuing Office pursuant to Part I, Section I-9, of this RFP any questions about whether a cost or other component is included or applies. All Proposers will then have the benefit of the Issuing Office's written answer so that all proposals are submitted on the same basis.

**II-9. TIME ESTIMATES.** Regarding time estimates for staff, for each task or group of tasks in the Work Plan, indicate the number of direct staff hours for each employee assigned which is required for completion. Include a Project Schedule chart or spreadsheet, showing the direct staff hours for each monthly period for each task or group of tasks in the Work Plan. In addition, provide a schedule indicating the estimated staff hours each individual (project management or lead personnel, professional support personnel, and administrative support personnel) will spend on indirect support for the various tasks or groups of tasks. **Note that the schedule of estimated staff hours each individual will spend on the various task areas must be included in the Technical Submittal as well as in the separately bound Cost Submittal. The difference is that the Cost Submittal will include the monetary costs of the staff hours, and the Technical Submittal will only list hours without any indication of the costs related to those hours.**

### **PART III**

#### **CRITERIA FOR SELECTION**

**III-1. MANDATORY RESPONSIVENESS REQUIREMENTS.** To be eligible for selection, a proposal must be:

- a) Timely received from a Proposer; and
- b) Properly signed by the Proposer.

**III-2. TECHNICAL NONCONFORMING PROPOSALS.** The two (2) Mandatory Responsiveness Requirements set forth in Section III-1 above (A-B) are the only RFP requirements that the Commonwealth will consider to be non-waivable. The Issuing Office reserves the right, in its sole discretion, to (1) waive any other technical or immaterial nonconformities in an Offeror's proposal, (2) allow the Offeror to cure the nonconformity, or (3) consider the nonconformity in the scoring of the Offeror's proposal.

**III-3. EVALUATION.** The Issuing Office has selected a committee of qualified personnel to review and evaluate timely submitted proposals. Independent of the committee, the BSBO will evaluate the Small Diverse Business Submittal and provide the Issuing Office with a rating for this component of each proposal. After the committee completes its evaluation, the committee will consult with the EDCs prior to recommending selection of a Proposer to the Commission. The committee's selection shall be subject to the approval of the Commission. The Issuing Office will notify the selected Proposer in writing of the Commission's selection for negotiation the responsible Proposer whose proposal is determined to be the most advantageous to the Commonwealth as determined by the Commission after taking into consideration all of the evaluation factors. The Commission will award a contract only to a Proposer determined to be responsible in accordance with the most current version of Commonwealth Management Directive 215.9, *Contractor Responsibility Program*.

**III-4. CRITERIA FOR SELECTION.** The following criteria will be used in evaluating each proposal. In order for a proposal to be considered for selection for best and final offers or

selection for contract negotiations, the total score for the technical submittal of the proposal must be greater than or equal to 70% of the available technical points.

- a. **Technical:** The Issuing Office has established the weight for the Technical criterion for this RFP as **50 %** of the total points. Evaluation will be based upon the following in order of importance. The final Technical scores are determined by giving the maximum number of technical points available to the proposal with the highest raw technical score. The remaining proposals are rated by applying the Technical Scoring Formula set forth at the following webpage:  
[http://www.portal.state.pa.us/portal/server.pt/community/rfp\\_scoring\\_formulas\\_oerview/20124](http://www.portal.state.pa.us/portal/server.pt/community/rfp_scoring_formulas_oerview/20124).

**A. WORK PLAN.** Emphasis here is on the soundness of approach and reasonableness of the time allowances proposed. Evaluated under this criterion will be the techniques to be used for collecting and analyzing data; the sequence and relationships of major work steps; and methods of managing the work. Also considered in this category will be the Proposer's compliance with specific RFP requirements as well as its understanding of the Commission's work involved, and the need for project management controls and adequate quantification (and support for the quantification), where possible, for all findings, conclusions, and recommendations and communications thereof.

**B. PROFESSIONAL PERSONNEL AND INFRASTRUCTURE.** This refers to the competence and appropriate assignment of the project management or lead personnel, professional support personnel, and technical support staff. Qualifications of personnel will be measured by education and experience, with particular reference to experience on projects similar to that described in the RFP. Infrastructure will be measured by the Proposer's organizational, financial, and physical assets and whether these will adequately support the work load and demands associated the Statewide Evaluation Program.

**C. PRIOR WORK.** The Commission believes that prior experience will be important to performing the work. Prior work will be evaluated to judge the ability of the Proposer to meet the terms of the RFP. Prior work will be used to judge the quality and relevancy of projects completed by the Proposer.

- b. **Cost:** The Issuing Office has established the weight for the Cost criterion for this RFP as **30 %** of the total points. The cost criterion is rated by giving the proposal with the lowest total cost the maximum number of Cost points available. The remaining proposals are rated by applying the Cost Formula set forth at the following webpage:  
[http://www.portal.state.pa.us/portal/server.pt/community/rfp\\_scoring\\_formulas\\_oerview/20124](http://www.portal.state.pa.us/portal/server.pt/community/rfp_scoring_formulas_oerview/20124).

c. **Small Diverse Business Participation:**

BSBO has established the weight for the Small Diverse Business (SDB) participation criterion for this RFP as **20 %** of the total points. Each SDB participation submittal will be rated for its approach to enhancing the utilization of SDBs in accordance with the below-listed priority ranking and subject to the following requirements:

1. A business submitting a proposal as a prime contractor must perform 60% of the total contract value to receive points for this criterion under any priority ranking.
2. To receive credit for an SDB subcontracting commitment, the SDB subcontractor must perform at least fifty percent (50%) of the work subcontracted to it.
3. A significant commitment is a minimum of five percent (5%) of the total contract value.
4. A commitment less than five percent (5%) of the total contract value is considered nominal and will receive reduced or no additional SDB points depending on the priority ranking.

**Priority Rank 1:** Proposals submitted by SDBs as prime offerors will receive 150 points. In addition, SDB offerors that have significant subcontracting commitments to additional SDBs may receive up to an additional 50 points (200 points total available).

Additional subcontracting commitments to SDBs are evaluated based on the proposal offering the highest total percentage SDB subcontracting commitment. All other Offerors will be scored in proportion to the highest total percentage SDB subcontracting commitment within this ranking. *See formula below.*

**Priority Rank 2:** Proposals submitted by SDBs as prime contractors, with no or nominal subcontracting commitments to additional SDBs, will receive 150 points.

**Priority Rank 3:** Proposals submitted by non-small diverse businesses as prime contractors, with significant subcontracting commitments to SDBs, will receive up to 100 points. Proposals submitted with nominal subcontracting commitments to SDBs will receive points equal to the percentage level of their total SDB subcontracting commitment.

SDB subcontracting commitments are evaluated based on the proposal offering the highest total percentage SDB subcontracting commitment. All other Offerors will be scored in proportion to the highest total percentage SDB subcontracting commitment within this ranking. *See formula below.*

**Priority Rank 4:** Proposals by non-small diverse businesses as prime contractors with no SDB subcontracting commitments shall receive no points under this criterion.

To the extent that there are multiple SDB Participation submittals in Priority Rank 1 and/or Priority Rank 3 that offer significant subcontracting commitments to SDBs, the proposal offering the highest total percentage SDB subcontracting commitment shall receive the highest score (or additional points) available in that Priority Rank category and the other proposal(s) in that category shall be scored in proportion to the highest total percentage SDB subcontracting commitment. Proportional scoring is determined by applying the following formula:

$$\frac{\text{SDB \% Being Scored}}{\text{Highest \% SDB Commitment}} \times \frac{\text{Points/Additional Points Available}^*}{\text{Points Available}^*} = \frac{\text{Awarded/Additional SDB Points}}{\text{SDB Points}}$$

*Priority Rank 1 = 50 Additional Points Available*

*Priority Rank 3 = 100 Total Points Available*

Please refer to the following webpage for an illustrative chart which shows SDB scoring based on a hypothetical situation in which the Commonwealth receives proposals for each Priority Rank:

[http://www.portal.state.pa.us/portal/server.pt/community/rfp\\_scoring\\_formulas\\_overview/20124](http://www.portal.state.pa.us/portal/server.pt/community/rfp_scoring_formulas_overview/20124)

**III-5. OFFEROR RESPONSIBILITY.** To be responsible, an Offeror must submit a responsive proposal and possess the capability to fully perform the contract requirements in all respects and the integrity and reliability to assure good faith performance of the contract.

In order for an Offeror to be considered responsible for this RFP and therefore eligible for selection for best and final offers or selection for contract negotiations:

- A. The total score for the technical submittal of the Offeror's proposal must be greater than or equal to **70%** of the **available technical points**; and
- B. The Offeror's financial information must demonstrate that the Offeror possesses the financial capability to assure good faith performance of the contract. The Issuing Office will review the Offeror's previous financial statements, any additional information received from the Offeror, and any other publicly-available financial information concerning the Offeror, and assess each Offeror's financial capacity based on calculating and analyzing various financial ratios, and comparison with industry standards and trends.

An Offeror which fails to demonstrate sufficient financial capability to assure good faith performance of the contract as specified herein may be considered by the Issuing Office, in its sole discretion, for Best and Final Offers or contract negotiation contingent upon such Offeror providing contract performance security for the first contract year cost proposed by the Offeror in a form acceptable to the Issuing Office. Based on the financial condition of the Offeror, the Issuing Office may require a certified or bank (cashier's) check, letter of credit, or a performance bond conditioned upon the faithful performance of the contract by the Offeror. The required performance security must be issued or executed by a bank or surety company authorized to do business in the Commonwealth. The cost of the required performance security will be the sole

responsibility of the Offeror and cannot increase the Offeror's cost proposal or the contract cost to the Commonwealth.

Further, the Issuing Office will award a contract only to an Offeror determined to be responsible in accordance with the most current version of Commonwealth Management Directive 215.9, Contractor Responsibility Program.

**III-6. FINAL RANKING AND AWARD.**

- A. After any best and final offer process conducted, the Issuing Office will combine the evaluation committee's final technical scores, BSBO's final small diverse business participation scores, the final cost scores, and (when applicable) the domestic workforce utilization scores, in accordance with the relative weights assigned to these areas as set forth in this Part.
- B. The Issuing Office will rank responsible offerors according to the total overall score assigned to each, in descending order.
- C. The Issuing Office must select for contract negotiations the offeror with the highest overall score; PROVIDED, HOWEVER, THAT AN AWARD WILL NOT BE MADE TO AN OFFEROR WHOSE PROPOSAL RECEIVED THE LOWEST TECHNICAL SCORE AND HAD THE LOWEST COST SCORE OF THE RESPONSIVE PROPOSALS RECEIVED FROM RESPONSIBLE OFFERORS. IN THE EVENT SUCH A PROPOSAL ACHIEVES THE HIGHEST OVERALL SCORE, IT SHALL BE ELIMINATED FROM CONSIDERATION AND AWARD SHALL BE MADE TO THE OFFEROR WITH THE NEXT HIGHEST OVERALL SCORE.
- D. The Issuing Office has the discretion to reject all proposals or cancel the request for proposals, at any time prior to the Contract being fully executed, when it is in the best interests of the Commonwealth. The reasons for the rejection or cancellation shall be made part of the contract file.

**III-7. POTENTIAL CONFLICTS OF INTEREST.**

In order to ensure an impartial review of the EDCs' plans, other than in performance of duties under this contract, the Contractor or any subcontractors, or any parent or related entities to the Contractor or any subcontractors, or any of the Contractor's or any subcontractors' employees, may not provide evaluation or conservation services to any of the Pennsylvania-based EDCs during the contract term. Affiliates of EDCs may not offer Proposals. In addition, the contract or will seek review and approval from the Project Officer on a case-by-case basis before contracting with electric distribution utilities located outside of Pennsylvania that are affiliates of Pennsylvania-based EDCs or who share the same corporate parent company. Factors to be considered by the Commission include, but are not limited to, the following: 1) whether the contract oversight for the non-Pennsylvania-based EDC involves the same staff that are involved in contract oversight of the Act 129 program contracts; 2) whether the staff that are involved in the Commission contract are the same or different from the staff that would work on the out-of-state contract; and 3) whether the nature of the work on the out-of-state contract involves EM&V and EE&C

program design work or other work such as market research. Requests for review from the Contractor should include information on these factors as well as other factors that may be relevant to potential conflicts of interest.

In order to ensure a completely independent evaluation and provide maximum credibility to the resultant reports, if the interested Proposer has performed evaluation or conservation services for the EDCs, the contractor must disclose this information to the Commission. Additionally, any work performed by the Proposer in relation to the EDCs on behalf of another party, including work performed in an adversarial proceeding, must be disclosed. The Proposer that has performed such prior work is required to explain, in detail, the measures that will be taken to avoid any conflict of interest or appearance of impartiality that may arise as a consequence of this contract. The Issuing Office will determine, on a case-by-case basis in consultation with the EDCs, whether such prior activity creates an actual or potential conflict of interest that bars the Proposer's proposal from consideration. The EDCs shall have the right to perform their own conflict of interest investigation and report the results back to the Issuing Office prior to selection of the contractor. (*See also* II-6.)

**III-8. POTENTIAL CONFLICT OF INTEREST WAIVER DURING PHASE I TO PHASE II OVERLAP PERIOD:** In the interest of the Commission having an unrestricted pool of evaluation firms that could offer a bid in response to the SWE RFP for Phase II, the Commission will institute a temporary waiver of the Potential Conflict of Interest provisions contained in Section III-7 above. The temporary waiver will cover the Phase I to Phase II overlap period from June 1, 2013 until February 28, 2014. The temporary waiver will enable an evaluation firm currently under contract with a Pennsylvania-based EDC for Phase I evaluation services to offer a bid, and if successful in securing such a contract with the Commission, to serve as the Commission's Phase II SWE under certain conditions.

The Commission anticipates that while the Phase I program period will officially close on May 31, 2013, the evaluation activities for Phase I will likely continue for several months, but no later than February 28, 2014. The Commission also anticipates that it will need Phase II evaluation services to commence on about March 1, 2013 so that EDC data tracking and reporting provisions are in place before the Phase II EE&C programs begin on June 1, 2013.

In the event that an EE&C program evaluation firm who has an existing Phase I contract with a Pennsylvania-based EDC is the successful bidder for the Commission's Phase II SWE, the following conditions must be met during the overlap period from June 1, 2013 through February 28, 2014:

1. The evaluation firm will not provide Phase I evaluation services to any Pennsylvania-based EDC beyond February 28, 2014.
2. The evaluation firm will not enter into a contract, nor provide evaluation services to any Pennsylvania-based EDC for the remainder of Phase II.

3. The evaluation firm must ensure the Commission that there is different staff assigned to the EDC and SWE contracts during the overlap period. Furthermore, the evaluation firm must demonstrate reasonable provisions of separation between the two contracts so that there are no perceived or actual conflicts of interest between serving the Commission and EDCs during the overlap period.

## **PART IV**

### **WORK STATEMENT**

**IV-1. GENERAL OVERVIEW.** With the passage of Act 129 of 2008, the Commission has been charged by the Pennsylvania General Assembly with establishing an energy efficiency and conservation (“EE&C”) program. In Phase I, the EE&C program required each electric distribution company (“EDC”) with at least 100,000 customers to submit a plan for Commission approval to reduce electric consumption by May 31, 2011, by at least 1% of its expected consumption for June 1, 2009 through May 31, 2010. 66 Pa. C.S. § 2806.1(c)(1). By May 31, 2013, the total annual consumption is to be reduced by a minimum of 3% of the EDC’s consumption for June 1, 2009 through May 31, 2010. 66 Pa. C.S. § 2806.1(c)(2). Also, by May 31, 2013, each covered EDC’s peak demand is to be reduced by a minimum of 4.5% of the EDC’s annual system peak demand in the 100 hours of highest demand, measured against the EDC’s peak demand during the period of June 1, 2007 through September 30, 2007. 66 Pa. C.S. §2806.1(d)(1). The Phase I Act 129 EE&C programs commenced in 2009 and will operate through May 31, 2013.

Act 129 also required the Commission to periodically evaluate whether there are additional cost-effective energy efficiency and peak load reductions to be garnered in subsequent phases of Act 129 and if so, to require additional, incremental reductions. 66 Pa. C.S. §2806.1 (C)(3), (D)(2). In order to make an informed decision about a possible Phase II of Act 129 programs, the Commission contracted with the Phase I SWE to conduct residential as well as commercial and industrial baseline studies in late 2011 and early 2012 as well as a Phase II, Market Potential Energy Efficiency Study. The Baseline and Market Potential Studies were released by the Commission on May 10, 2012 and posted to the Commission’s website.

The Commission also began planning for a potential Phase II Act 129 program with stakeholders by issuing a Secretarial Letter on March 1, 2012. The Secretarial Letter sought comments on a number of important topics for designing and implementing future phases of Act 129. On March 16, 2012, the Commission held a stakeholder meeting to provide an opportunity for discussion of the same topics. The Secretarial Letter also invited interested parties to file written comments by April 17, 2012 on Act 129 planning issues and an implementation timeline.

After reviewing comments to the March Secretarial Letter, the Commission issued a Tentative Phase II Implementation Order for comment on May 11, 2012. The Phase I SWE held a stakeholder meeting on June 5, 2012 to explain the findings from the Baseline and Market

Potential Studies. On August 3, 2012, the Commission entered a Final Phase II Implementation Order establishing a timeline for program implementation and establishing energy efficiency targets for each EDC covered by Act 129. The Final Implementation Order established a three-year Phase II term commencing on June 1, 2013 and ending on May 31, 2016. The Order tentatively adopted the energy efficiency reduction targets recommended by the Phase I SWE and proposed in the Commission's Tentative Order. The percentage reduction targets, as well as their three-year cumulative MWh figures, appear below in Table 1.

**Table 1: Act 129 Phase II Three-Year Energy Efficiency Reduction Compliance Targets**

<b>EDC</b>	<b>THREE-YEAR PROGRAM ACQUISITION COST (\$/MWh)</b>	<b>THREE-YEAR % of 2009/10 FORECAST REDUCTIONS</b>	<b>THREE-YEAR MWh VALUE OF 2009/10 FORECAST REDUCTIONS</b>
Duquesne	\$211.90	2.0	276,722
Met-Ed	\$220.87	2.3	337,753
Penelec	\$216.19	2.2	318,813
Penn Power	\$209.20	2.0	95,502
PPL	\$224.71	2.1	821,072
PECO	\$227.55	2.9	1,125,851
West Penn	\$209.42	1.6	337,533

In the Commission's Final Implementation Order of August 2, 2012, the Commission clarified its policy on the use of Net-to-Gross (NTG) adjustments when evaluating the Act 129 program (Order at pg. 81-83). The Commission noted that the NTG adjustments will not be used for determining compliance with savings targets. However, EDCs should use NTG studies for program design and planning (particularly for when to phase out a program measure). Therefore, the Phase II SWE will not be required to conduct NTG studies or make NTG adjustments.

The Commission did not adopt peak demand reduction targets for Phase II, but has contracted with the Phase I SWE to study the potential for identifying a cost-effective Phase III Act 129 demand response program design that can operate in conjunction with the PJM curtailment programs. In the event the Commission identifies a cost-effective Phase III demand response program design, the Commission may decide to have the Phase II SWE conduct a demand response market potential study. More detail on the contingency of conducting the demand response market potential study appears later in this RFP under the section labeled Statewide Studies. Bidders are reminded that they should include a stand-alone cost proposal for a demand response market potential study in addition to, and separate from their overall project cost proposal.

The Commission has also issued other Phase II related orders that are pertinent to Phase II SWE activities. On August 30, 2012, the Commission issued a Final Implementation Order for the Total Resource Cost (TRC) Test for Phase II of Act 129. The Commission also issued a Tentative Order for comment on an update to the Technical Reference Manual (TRM) on September 13, 2012 and expects to issue a Final TRM Order on December 20, 2012. The effective date of the TRM changes from the December 2012 Final Order is June 1, 2013;

thereby, applying to the first year of Phase II. Thereafter, the Commission anticipates updating the TRM on an annual or periodic basis to be determined by the Commission. The Commission anticipates that the Phase II SWE will be very involved in TRM updates that will occur in Phase II with more detail contained in this RFP.

The Phase II planning timeline continues with EDCs filing their EE&C program plans on or before November 15, 2012. The Commission plans to rule on the EE&C plans by March 14, 2013. Phase II EE&C programs will commence on June 1, 2013 and operate until May 31, 2016.

The EDCs that must comply with the Act are Duquesne Light Company, Metropolitan Edison Company, PECO Energy Company, Pennsylvania Electric Company, Pennsylvania Power Company, PPL Electric Utilities Corporation and West Penn Power Company. The broad customer class categories that are to be tracked are residential, low-income residential, commercial; industrial and governmental, educational and non-profit entities.

**IV-2. GENERAL OBJECTIVES.** The Act requires the Commission to establish an evaluation process that monitors and verifies data collection, quality assurance and the results of each EDC plan and the program as a whole, including cost-effectiveness in accordance with the TRC test. In addition, the Commission has adopted and annually updated a TRM to help fulfill the evaluation process requirements contained in the statute. While the Act requires each EDC plan to explain how quality assurance and performance will be measured, verified and evaluated, it requires the Commission to monitor and verify EDC data collection, quality assurance processes and performance measures, by customer class. This evaluation is to be conducted every year, as each EDC must submit a final annual report by November 15, documenting the effectiveness of its plan, energy savings measurement and verification, an evaluation of the cost-effectiveness of expenditures and any other information the Commission requires.

The Commission is issuing this RFP to retain the services of a statewide Contractor for Phase II EE&C Plans who will monitor and verify EDC data collection, quality assurance processes and performance of EDCs' EE&C programs. This Contractor will also evaluate each EDC plan results on an annual basis and the entire EE&C program as a whole. This evaluation will include an analysis of plan and program impacts (energy savings) and cost-effectiveness, report results and provide recommendations for plan and program improvements. The statewide Contractor will produce an accurate assessment of the future potential for energy savings through market potential assessments.

The work scope in this RFP is at a fairly high level of overview and generally seeks to build upon the processes, manuals and studies adopted during Phase I to audit and verify the accuracy of the EDC provided results and the Act 129 EE&C program as a whole. Bidders are requested to propose an approach to evaluation of the EDC Phase II EE&C plans so as to accomplish the following:

- Conduct an evaluation process to monitor, audit and verify EDC data collection and provide quality assurance that EDC-claimed savings are independently verified (includes working with EDC independent evaluators to audit results and assessing quarterly and annual reports that EDCs provide to the Commission.)

- Evaluate potential for program and measure improvement of each EDC.
- Review and update the existing Phase I Audit Plan.
- Maintain and annually update the Pennsylvania Technical Reference Manual (TRM) in conjunction with TUS staff and the Commission's formal order process. This includes incorporating information derived from primary statewide metering/logging studies, Act 129 program data and secondary research sources to ensure that the TRM accurately captures EE&C program measure savings.
- Maintain and update the Pennsylvania Total Resource Cost (TRC) Test Manual in conjunction with TUS staff and the Commission's formal order process.
- Maintain EDC's EE&C program performance data, a Sharepoint site, and prepare quarterly and annual reports for the Commission.
- Conduct statewide metering/logging hour-of-use studies for a) commercial and industrial lighting and b) for residential lighting.
- Conduct an energy efficiency baseline study to support a Phase III market potential study.
- Conduct an energy efficiency market potential study and prepare recommendations to the Commission for Phase III energy efficiency targets.
- At the Commission's discretion, conduct a demand-response market potential study and prepare recommendations to the Commission for Phase III demand response targets.
- Review EDC EE&C program plan changes and advise Commission staff of the ability of the plan changes to cost-effectively achieve savings targets.
- Provide expert consultation to Commission staff, coordinate program evaluation with Commission staff and conduct or participate in meetings with Commission staff and stakeholders.

The Contractor will be responsible for managing sub-contractors, if any, so that the Contractor speaks with one voice through the prime Contractor. The Contractor will also be responsible for maintaining regular and direct communication with the Project Officer and staff of the Commission's Bureau of Technical Utility Services. Contractor must also maintain and archive electronic and paper files and data collected or developed during the conduct of its duties using a secure Sharepoint site. Contractor must attend meetings as directed by the Project Officer.

The Contractor will have access to customer information and other confidential data. Contractor will need to sign confidentiality agreements with EDCs and other entities that will limit Contractor's use of this data to supporting this auditing program.

Although this contract will be paid for by the Contracting Entity, the Contractor should realize that the Commission is the principal client. Consequently, there will be no direct reporting by the Contractor to the Contracting Entity or EDCs, without prior Commission staff approval. It is necessary that the Commission maintain control of this engagement and that it and the EDCs be kept abreast of the Contractor's progress. Therefore, periodic oral and written

reports will be necessary in addition to the frequent informal contact between the Contractor's staff and the Commission's staff.

The roles and functions that EDCs, Contractor and Commission staff will fulfill are outlined in Table 2.

**TABLE 2**

**Pennsylvania Energy Efficiency and Conservation Programs – Evaluation, Measurement and Verification, Data Tracking and Reporting Activities: Roles and Responsibilities for EDCs, Statewide Evaluator and Commission**

<b>Task and/or Deliverable</b>	<b>Electric Distribution Company (or their Consultant)</b>	<b>Contractor</b>	<b>PA PUC</b>
<b>Statewide Studies</b>			
Conduct electric energy efficiency baseline studies to support Market Potential Study.		XX	
Conduct electric energy efficiency Market Potential Study for targets to be achieved in a potential Phase III EE&C Program from 6/1/16 to 5/31/21.		XX	
Optional at Commission's discretion – conduct a Demand Response Potential Study for targets to be achieved in a potential Phase III Demand Response Program from 6/1/16 to 5/31/21.		XX	
Conduct logging/metering studies to update the hours-of-use values in the TRM for residential and C&I lighting.		XX	
Review and approval of Statewide Baseline, Market Potential and logging/metering studies.			XX
Initiate and coordinate annual updates to TRM and interim updates (new protocols).		XX	
Approval of TRM updates.			XX
Initiate, scope, and conduct/coordinate statewide site inspections, statewide site metering studies, review of data/studies from PA and other states, etc. to determine if the PA TRM estimates savings and/or to revise PA TRM protocols.		XX	
Develop and conduct net-to-gross studies.	XX		
Coordinate the development of and approve the methodologies for EDC net-to-gross studies consistent with net-to-gross white paper. Update white paper as needed.		XX	

<b>Audit and Assess EDC Phase II Programs and Results</b>			
Prepare EDC impact and process evaluation plans; including database and reporting protocols, survey templates, and schedules.	XX		
Review and approval of EDC evaluation plans.		XX	XX
Review and update existing Phase I Audit Plan. Thereafter, update Audit Plan as needed.		XX	
Approval of revised statewide audit plan			XX
Conduct Impact Evaluation, process evaluation, NTG analysis and cost-effectiveness evaluation.	XX		
Review/audit all EDC evaluation results-impact evaluation, process evaluation, NTG analysis and cost-effectiveness evaluation.		XX	
<b>Databases</b>			
Design, implementation and maintenance of EDC primary program tracking database(s) with project and program data.	XX		
Establishing and implementing quality control reviews of EDC program tracking databases.		XX	
Statewide Data Management and Quality Control. Design, implementation and maintenance of statewide database of program, portfolio, EDC and statewide energy and demand savings and cost-effectiveness reporting.		XX	
Develop and maintain secure Sharepoint site for maintenance and exchange of confidential data and information with EDCs.		XX	
<b>Primary Data Collection and Impact Analyses</b>			
Primary data collection and site baseline and ex-post verification for EE projects.	XX		
Analyses and documentation of project, program and portfolio gross and net energy and demand savings.	XX		
Quality control and due diligence. Inspections of project sites and review of primary data and analyses, preparation of verified claimed savings.	XX		
Audit and assess EDC evaluator performance of EM&V Plans.		XX	
<b>EDC Plan Review</b>			
Review of filed EDC EE&C plans and provide advice to Commission staff on ability of plans to cost-effectively meet targets (includes cost-effectiveness analyses)		XX	
Review of EDCs' EM&V plans and provide advice to Commission staff on ability of plans to		XX	

adequately measure energy savings			
<b>Reporting (Annual and Quarterly)</b>			
EDC quarterly and annual reporting of EE program and portfolio net and gross impacts, as applicable, and cost-effectiveness, and EDC progress in reaching targets	XX		
Develop the Statewide quarterly and annual report templates. Review EDCs' reports and advise the Commission of program and portfolio results: net and gross impacts and cost-effectiveness and EDC progress in reaching targets. Prepare Statewide Annual and Quarterly Reports to the Commission.		XX	
Review and approve Contractor's Statewide Quarterly and Annual Reports.			XX
Review EDC and PUC Contractor's Quarterly and Annual Reports on EE Programs: net and gross savings impacts and cost-effectiveness and EDC progress in reaching targets.			XX
<b>Best Practices</b>			
Participation in at least annual impact evaluation process review and improvement workshops as needed	XX		XX
Preparation of best practices recommendations for improvements to impact evaluation processes		XX	
Prepare best practices recommendations for program modifications and improvements		XX	
<b>Other</b>			
Prepare materials and reports in support of Commission analysis of efficiency programs		XX	
Organize and conduct periodic and stakeholder meetings on evaluation results of EE programs, proposed changes to the TRM, etc.		XX	

**IV-3. UPDATE AND REVISE AUDIT PLAN.** The first phase of the contract will involve an update of the existing Audit Plan confirming the metrics and data formats EDCs must use and provide to the Contractor. The Contractor will update what data are required, how the data are to be measured, recorded and transmitted, and how the data will be audited.

The Contractor will be responsible for the following: a) update of the Audit Plan supporting verification of EDC plans and reports; b) review and update as needed EDC reporting requirements; c) confirmation that the EDC's EM&V review processes are appropriate to verify energy savings; d) an updated plan for evaluation activities, including coordination with EDC independent evaluator audit processes; e) establish and maintain a secure Sharepoint site for the exchange of non-public/confidential data and information between the SWE, EDCs and Commission; and f) identify best evaluation practices that should be implemented on a going

forward basis. Additional formal and informal reporting requirements may be required upon request of the Project Officer.

The update and revision of the Audit Plan will begin immediately after contract execution. The Contractor will meet with representatives of TUS and other designated Commission staff as needed throughout the update of the draft Audit Plan to discuss details and make decisions and will coordinate with EDCs as necessary to incorporate lessons learned and experience gained in Phase I. The update of the Audit Plan will not be considered final until approved by the Project Officer. The update of the Audit Plan will be completed by May 31, 2013, or earlier if possible.

The Audit Plan will be considered a “living document,” that can be revised on a regular basis throughout the project term. The Contractor, with approval of the Project Officer, can update the Audit Plan as needed to adjust to changes in EDC plans. It is anticipated that such updates will occur at such times that will allow EDCs ample opportunity to adjust their data collection and recording methods and meet their annual reporting requirements.

**IV-4. AUDITING AND VERIFICATION.** The Contractor will monitor and verify data collection, quality assurance and the results of each EDC plan on an ongoing basis in accordance with the revised Audit Plan approved under the contract. The Contractor will review each EDC’s plan tracking systems to assess each EDC’s ability to meet the Audit Plan and Commission-established targets in a cost-effective manner. The activities identified in the Audit Plan, and related to the Contractor’s monitoring and verifying data collection, quality assurance and results of each EDC plan will include, but are not limited, to the following:

- Maintaining an evaluation and management database.
- Conducting random spot verification coordinated with the EDC’s independent evaluator of EDC EM&V measurements and data.
- Acquiring data from EDCs and other sources and verifying EDC supplied data.
- Reviewing EDC’s plan to determine whether EDCs are meeting energy savings targets.
- Provide reasonable assurance that the claimed measures are being properly installed and utilized.
- Provide reasonable assurance that the installed measures are obtaining the claimed energy savings and demand reductions in accordance with the Commission approved TRM or other approved methods.
- Review and verify EDC’s performance by accompanying EDC evaluators on spot field inspections, in coordination with EDCs and Commission staff, using trained personnel.
- Spot verification, in coordination with EDCs and Commission Staff, utilizing short-term and long-term metering equipment on participating customer property.
- Auditing EDC survey instruments.

- Review and verify, in coordination with the EDCs, the EDC evaluators' customer and trade-ally satisfaction surveys and reports.
- Coordinate the development of, and approve the methodologies for net-to-gross studies to be performed by EDCs.
- Conducting limited market baseline studies to establish baselines as needed for the impact evaluations of specific programs.
- Analyzing verification data collected by EDC evaluators.
- Interfacing and coordinating with Commission staff and EDCs.
- Critiquing reported energy and demand savings utilizing field verification, Technical Reference Manual derived savings, approved custom measure derived savings, measurement and verification, and large scale billing analyses.
- Verifying reported cost-effectiveness of EDC plans using the Commission adopted Total Resource Cost Test.
- Review and monitor EDCs' EM&V plans and execution of said plans.

**IV-5. TECHNICAL REFERENCE MANUAL AND TRC TEST UPDATE.** The Contractor will coordinate and participate in an annual update of the TRM as it relates to the calculation of savings for standard energy efficiency measures. These tasks involve working with the Commission, EDCs and other stakeholders to identify measures for inclusion in the TRM and to revise existing savings calculations based on primary research from SWE metering/logging studies, Act 129 data from EM&V activities, secondary research sources, as well as changes in technology and/or government/industry standards and building codes.

The Commission has spoken about the importance of maintaining an up-to-date TRM as a policy objective. In the Final Implementation Order for the Phase II EE&C Program (Order PP 72 & 75) the Commission emphasized the importance of having the TRM updated annually and the need for the most up-to-date information regarding deemed savings values and assumptions. In maintaining the most up-to-date information, the Commission assures that Act 129 monies collected from ratepayers are reflecting the truest savings values possible. This policy objective outweighs the potential changes an EDC may need to make to its EE&C Plan following an update.

The Contractor will be responsible for making recommendations to TUS staff and the Commission about changes to the TRM that are needed to ensure that the Commission's policy objectives are met regarding an up-to-date TRM. The contractor should refer to Section IV-7 about metering/logging studies to be conducted in Phase II to ensure that the TRM incorporates current hours-of-use figures for residential, and commercial and industrial lighting measures installed in the EE&C program. The Commission maintained the same timeline and Commission tentative and final order process for use in Phase II TRM updates as was used in Phase I. The TRM will be updated annually with a final revised TRM due by December 31 for use effective June 1 of the following year (Final Implementation Order, p. 75).

The Commission's process for updating the TRM for the first year of the Phase II EE&C programs is already underway as a Tentative Order for comment was issued on September 13,

2012. The Commission expects to issue a Final TRM Order on December 20, 2012 for the TRM effective June 1, 2013.

In addition to any annual update to the TRM that is to be effective for Phase II, the contractor will be responsible for assisting with the update of the TRM to be effective for the first year of a Phase III EE&C program should the Commission decide to implement a Phase III program. The schedule for the Phase III TRM update will be determined by the Commission at a later date. If possible, the Phase III TRM update should be finalized at least a year in advance of June 1, 2016 so EDCs can prepare Phase III plans that are based on known Phase III TRM values.

The Contractor will coordinate and participate in a periodic review of the TRC Test utilized by the Commission and EDCs to determine cost-effectiveness. The Commission issued a Final Implementation Order for the TRC Test for Phase II of Act 129 EE&C programs on August 30, 2012. Unless otherwise directed by the Project Officer, the contractor will be expected to assist the Commission in updating the TRC test during the first eight months of 2015 should the Commission decide to implement a Phase III Act 129 EE&C program. The 2015 update of the TRC test would be effective with the start of a potential Phase III programs.

**IV-6. DATA MANAGEMENT AND COMMISSION REPORTS.** The Contractor will be responsible for maintaining program data and information, a Sharepoint site, and to prepare quarterly and annual reports on EE&C Program performance.

The Contractor will be responsible for designing, implementing and maintaining a statewide database of program and portfolio data by EDC and for the state as a whole. The database shall contain information on energy and demand savings and cost-effectiveness reporting.

The Contractor will be responsible for establishing a secure Sharepoint site for the exchange of non-public/confidential data and information. The Contractor must maintain and archive electronic and paper files and data collected during the conduct of its duties using a secure Sharepoint site.

The Contractor will be responsible for preparing an annual report for the Commission. The Contractor's annual reporting process shall be as follows:

- (1) EDCs provide their Final Annual Report to the Commission on November 15, following the conclusion of the EE&C program year on May 31.
- (2) Contractor will provide a draft annual report on each EDC's Final Annual Report to the EDCs by January 16.
- (3) EDCs will provide comments on the draft annual report to the Contractor and the Project Officer by January 23.
- (4) The Contractor will review the EDCs' comments and provide a draft final report to the Project Officer by January 30.

- (5) Commission staff including Commissioner Offices will review and provide comments to the Contractor by February 13.
- (6) The Contractor will provide a final annual report on each EDC plan and the program as a whole to the Project Officer by February 28.
- (7) Final Annual Reports will be provided to the Commission by February 28, 2015 and February 28, 2016. The annual reports may form the basis for Commission annual reports required to be provided to the legislature by November 14 of each year.
- (8) The contractor will provide a Final Three-Year Energy Efficiency and Conservation Program Assessment Report to the Commission by February 28, 2017. This report will include the content for the 2015/2016 program year in lieu of a 2015/2016 Final Annual Report.
- (9) An Update Report will be required from the Contractor by July 15, 2014 that contains as much evaluated savings as possible for the program year beginning June 1, 2013. Where evaluated savings are not available, the Update Report should contain as much claimed savings to date as possible.
- (10) The Contractor shall provide an electronic version of the Final and Update Reports that are compatible with the Commission's network software to the Commission and the Contracting Entity for disbursal to the EDCs.

The Annual Reports and the Final Three-Year Report will include, but are not limited to, the following:

- An analysis of each EDCs' plan expenditures and an assessment of the programs expenditures.
- An analysis of each EDCs' protocol for measurement and verification of energy savings attributable to its plan, in accordance with the Commission adopted TRM and approved custom measures.
- An analysis of the cost-effectiveness of each EDCs' expenditures in accordance with the Commission adopted Total Resource Cost Test Manual.
- A review of Technical Reference Manual information and savings values with suggestions for possible revisions and additions.
- A review of the Total Resource Cost Test Manual with suggestions for possible revisions and additions.
- A review of any proposed revisions and updates to EDC plans.

In addition to annual reports as discussed above, the Contractor will be responsible for preparing three quarterly reports per program year for the Commission. The quarterly SWE reports are due 45 days after the EDCs provide the Commission and the SWE with their own quarterly reports. The EDC quarterly reports are due on October 15, January 15 and April 15. The SWE quarterly reports are due on November 30, March 1 and May 30. A fourth quarterly report is not needed as that

information would be provided as a part of the SWE annual report to the Commission. Each quarterly SWE report shall provide updates on energy (MWh) and demand (MW) savings, impact evaluations, cost effectiveness and process evaluations of EE&C programs by utility. The reports should contain information on program performance by quarter, cumulative program year-to-date and cumulative phase-to-date information as appropriate.

The Contractor may be asked to provide expert testimony regarding the conclusions contained in the annual, Final Three-Year and quarterly reports.

**IV-7. LOGGING/METERING STUDIES.** The Contractor will be responsible for conducting statewide metering/logging studies to update the hour-of-use values in the Pennsylvania Technical Reference Manual (TRM). One study is needed for the residential sector and another for the commercial/industrial sector.

Bidders are encouraged to develop and propose a sampling plan and methodology for each sector study that is cost-effective and can provide reasonable statistical support for updating the hours-of-use savings values in the TRM. Findings should generally be statistically significant at a confidence level of 90% and a margin of error at 10%.

The logging/metering studies should be completed in time to incorporate new values into the TRM version that will be effective for potential Phase III programs beginning June 1, 2016.

**IV-8. ENERGY EFFICIENCY BASELINE STUDIES.** The Contractor will conduct updates to the Baseline Studies completed by the Phase I contractor to inform the Commission regarding establishing mandates for Phase II. The baseline studies are needed to support a Market Potential Analysis and Report to the Commission to provide guidance for a possible Phase III of Act 129 EE&C Programs for Pennsylvania.

Because of significant differences among customer groups, several distinct baseline studies may be needed for each EDC service territory. Bidders are encouraged to develop a proposal as to how they would develop cost-effective study plans and methodologies to support specific customer group targets or carve-outs in the SWE Market Potential Report.

The primary objectives of the baseline studies include the following:

- Select a representative random sample of select customer groups for participation in the baseline study;
- Profile electric customers groups at the sector and end use level;
- Determine the current saturation of energy using equipment in residential households, commercial and industrial facilities, etc.
- Determine the current saturation of energy efficient HVAC and appliances and energy efficiency measures and practices in the customer sector;
- Determine average baseline levels of energy use for lighting, plug loads space heating, space cooling and water heating by end use; and

- Determine the percent of energy using equipment by end use that is already high-efficiency equipment.

In Phase I, The Commission directed that each EDC service territory's residential sample and commercial and industrial sample be statistically significant at a confidence level of 90% and a margin of error of 10% at the EDC service territory level. Bidders should include recommendations for confidence and precision levels for the baseline studies in their technical proposals.

**IV-9. ENERGY EFFICIENCY POTENTIAL STUDY.** Act 129 requires the Commission to periodically evaluate the costs and benefits of the EE&C program. The evaluation is to be consistent with the Total Resource Cost Test. If the Commission determines that the benefits of the program exceed the costs, the Commission shall adopt additional required incremental reductions in consumption. See 66 Pa.C.S. § 2806.1(C)(3).

The Contractor will be responsible for conducting a statewide market potential study to determine the remaining opportunities for cost-effective electric energy efficiency savings in the service territories of the seven EDCs in Pennsylvania subject to Act 129. The study methodology should be detailed enough to result in recommendations to be contained in the report to the Commission for EDC-specific MWh targets for a potential Phase III of Act 129 EE&C programs. The study should focus on targets to be achieved between June 1, 2016 and May 31, 2021. The Market Potential Study should be completed no later than December, 2014. The exact delivery date for the report to the Commission shall be determined at a later date and consistent with the Commission's timeframe for implementing a potential Phase III of Act 129 EE&C programs.

This potential study will include, but is not limited to, the following:

- An assessment of the technical, economic, achievable and program potential for electric energy efficiency measures for the Commonwealth of Pennsylvania for the June 1, 2016 to May 31, 2021.
- An assessment and characterization of existing electric end-use baseline data on a customer class (e.g., residential; residential low income; commercial; industrial; and governmental, educational and non-profit entities) basis.
- An overview of the estimated share of electricity use by customer class and major end uses.
- A listing of available Pennsylvania specific load shapes for each customer class.
- A listing of available information about total yearly sales of selected, key energy efficiency equipment, saturation levels of this equipment by customer class, and useful lives of the equipment.
- An assessment of the saturation of other energy efficiency measures, such as efficient industrial processes.

- An assessment of the prevalence of energy conservation behaviors of end users.
- An analysis of the cost-effectiveness (from a statewide perspective) of the achievable program potential as a whole for the period June 1, 2016 to May 31, 2021.
- An assessment of future energy and load reduction potential to include target dates for achieving the targets.

**IV-10. OPTIONAL DEMAND RESPONSE MARKET POTENTIAL STUDY.** This section is for optional work which may or may not be undertaken, as determined by the Commission at some point in the future. Bidders should indicate their work plan for this work in a separate section, and should indicate their cost bid for the optional work in a separate section in the cost bid. **The cost of the optional work should not be included in the bidder's overall total cost in the cost bid.** The Commission will not consider the cost of the optional work in determining the bidder's scoring points for cost. The Commission will consider the work plan for the optional work as part of the technical evaluation of the bidder's proposal.

As a part of the revised SWE contract for Phase I dated December, 2011, the Commission directed the Phase I SWE to conduct a Demand Response Study (DR Study)<sup>1</sup>. The purpose of the DR Study was to determine if there is an optimal Act 129 demand response curtailment program design for Pennsylvania's electric customers that could operate in conjunction with the PJM demand response programs. An optimal demand response program design would be one in which the benefits to Pennsylvania ratepayers for the Act 129 demand response program would potentially be greater than the cost to Pennsylvania ratepayers.

In the event that the DR Study Report recommends an optimal, cost-effective Act 129 demand response program design, the Commission may require the Phase II SWE contractor to perform a demand response market potential study during Phase II<sup>2</sup>. The Demand Response Market Potential Study (DR Potential Study) would inform the Commission on the potential for Phase III demand response targets and budgets to be included in a potential Phase III Act 129 Implementation Order.

The Commission anticipates receiving the DR Study Report from the Phase I SWE in the first quarter of 2013. The Commission will review the report and decide to either commence or forego the DR Potential Study. In the event the Commission directs the commencement of the DR Potential Study, the Phase II SWE Contractor will receive written notification from the Commission's Director of Administration to proceed with the DR Potential Study and to provide separate line item entries on invoices for the costs incurred up to the maximum amount included in the contract for the DR Potential Study contingency.

If the Commission decides to execute the option to have the Phase II SWE conduct the DR Potential Study, the completion of the study must be closely coordinated with the Commission's planning cycle for a potential Phase III of EE&C Programs. The Act 129

<sup>1</sup> Request for Proposal, Act 129 Statewide Evaluator, PA PUC, Revised December, 2011, pages 38, 39; Appendix F.

<sup>2</sup> Final Implementation Order, EE&C Program, August 2, 2012, page 23.

requirement that additional, incremental requirements for reductions in peak demand be required by the Commission to be accomplished no later than May 31, 2017 [66 Pa. C.S. §2806.1 (D)(2)] is an important consideration for the timing of the delivery of the DR Potential Study. At this time, we estimate that the report would need to be provided to the Commission no later than December 2014. The report should recommend EDC-specific reduction targets in megawatts and percentage reductions as well as a statewide weighted average percentage reduction. The DR Potential Study should provide annual estimates of technical, economic, achievable and program potential for the June 1, 2016 through May 31, 2021 period.

**IV-11. MEETINGS AND OTHER REQUIREMENTS.** The Contractor will be required to participate in meetings with the Commission, Act 129 stakeholders and EDC representatives (EE&C Program Managers and EM&V Consultants). The following types of meetings are anticipated:

- Weekly conference calls with SWE team leaders and TUS staff. These calls are typically about one hour in duration.
- Occasional meetings at the Commission with Act 129 stakeholders. The SWE may lead these meetings (updating the TRM, baseline and market potential studies, updating the TRC) to be held in Harrisburg, Pennsylvania. These meetings may be up to a half day in duration and include PowerPoint presentations by the SWE as well as questions and answers. On average, two such stakeholder meetings will be held per year.
- Four in-person Program Evaluation Group (PEG) meetings with TUS staff and EDC representatives in Harrisburg per year. These meetings often involve PowerPoint presentations by the SWE and may be up to a full day in duration.
- Alternating with the in-person PEG meetings, the SWE may conduct about eight PEG conference call meetings with TUS staff and EDC representatives per year. The calls may be about an hour in duration.
- The SWE should plan on about two in-person meetings per year in Harrisburg with TUS staff, Commissioners' assistant staff and perhaps Commissioners. These meetings are about a half day in duration and typically involve a PowerPoint presentation by the SWE.
- Other in-person or conference call meetings may be required with TUS staff and/or the Project Officer as needed. The meetings may involve topics such as project budget review and status on special research projects.
- Meetings with EDC Program Managers and EM&V Consultants as needed. These meetings may occasionally be in person but more commonly by conference call. Topics may include the development of custom measure protocols, evaluation, audit planning or feedback.

In addition to meeting activity, the Commission may require the SWE to design and develop materials needed for Commission discussions, workshops, reports, etc.

**IV-12. TESTIMONY.** The Contractor is required to stand behind its conclusions and recommendations by testifying and by aiding in the preparation of testimony by Commission staff, if necessary, in any future rate case or other proceeding before the Commission or for

proceedings in other venues. The Contractor is required to provide factual support for its conclusions and recommendations in such testimony. The Contractor's staff involved in providing such testimony shall be compensated at 150% of the hourly rates indicated in the Proposal. These costs will be paid in accordance with the payment methods of the contract; however, those costs will be in addition to and billed separately from the base contract amount at 150% of the consultant hourly rates provided in the Contractor's Proposal.

**IV-13. ONGOING OBLIGATIONS.** Data, records, and other materials collected or created by the contractor regarding evaluation of the conservation plans is property of the Commission. Information must be maintained in a manner to enable access for at least ten years from date of creation of the data, record or other materials. Prior to destruction of such materials, the Contractor must notify the Commission to allow the Commission to take custody of such materials, if it so chooses.

**IV-14. CONTRACT REQUIREMENTS – SMALL DIVERSE BUSINESS PARTICIPATION.**

All contracts containing Small Diverse Business participation must also include a provision requiring the selected contractor to meet and maintain those commitments made to Small Diverse Businesses at the time of proposal submittal or contract negotiation, unless a change in the commitment is approved by the BSBO.

The selected contractor's commitments to Small Diverse Businesses made at the time of proposal submittal or contract negotiation shall, to the extent so provided in the commitment, be maintained throughout the term of the contract and through any renewal or extension of the contract. Any proposed change must be submitted to BSBO, which will make a recommendation to the Contracting Officer regarding a course of action.

If a contract is assigned to another contractor, the new contractor must maintain the Small Diverse Business participation of the original contract.

The selected contractor shall complete the Prime Contractor's Quarterly Utilization Report (or similar type document containing the same information) and submit it to the contracting officer of the Issuing Office and BSBO within **10** workdays at the end of each quarter the contract is in force. This information will be used to determine the actual dollar amount paid to Small Diverse Business subcontractors and suppliers. Also, this information will serve as a record of fulfillment of the commitment the selected contractor made and for which it received Small Diverse Business participation points. If there was no activity during the quarter then the form must be completed by stating "No activity in this quarter."

**NOTE: EQUAL EMPLOYMENT OPPORTUNITY AND CONTRACT COMPLIANCE STATEMENTS REFERRING TO COMPANY EQUAL EMPLOYMENT OPPORTUNITY POLICIES OR PAST CONTRACT COMPLIANCE PRACTICES DO NOT CONSTITUTE PROOF OF SMALL DIVERSE BUSINESS STATUS OR ENTITLE AN OFFEROR TO RECEIVE CREDIT FOR SMALL DIVERSE BUSINESS UTILIZATION.**

## **INSTRUCTIONS FOR NONCOLLUSION AFFIDAVIT**

1. This Noncollusion Affidavit is material to any contract/purchase order awarded pursuant to this bid. According to section 4507 of Act 57 of May 15, 1998, 62 Pa. C.S. § 4507, governmental agencies may require Noncollusion Affidavits to be submitted with bids.
2. This Noncollusion Affidavit must be executed by the member, officer or employee of the proposer who makes the final decision on prices and the amount quoted in the bid.
3. Bid rigging and other efforts to restrain competition, and the making of false sworn statements in connection with the submission of bids are unlawful and may be subject to criminal prosecution. The person who signs the affidavit should examine it carefully before signing and assure himself or herself that each statement is true and accurate, making diligent inquiry, as necessary, of all other persons employed by or associated with the proposer with responsibilities for the preparation, approval or submission of the bid.
4. In the case of a bid submitted by a joint venture, each party to the venture must be identified in the bid documents, and an affidavit must be submitted separately on behalf of each party.
5. The term “complementary bid” as used in the affidavit has the meaning commonly associated with that term in the bidding process, and includes the knowing submission of bids higher than the bid of another firm, any intentionally high or noncompetitive bid, and any other form of bid submitted for the purpose of giving a false appearance of competition.
6. Failure to submit an affidavit with the bid proposal in compliance with these instructions may result in disqualification of the bid.

NONCOLLUSION AFFIDAVIT

Act 129 Statewide Evaluator RFP

State of \_\_\_\_\_:

County of \_\_\_\_\_: S.S.

I state that I am \_\_\_\_\_ (Title) of \_\_\_\_\_ (Name of Firm) and that I am authorized to make this affidavit on behalf of my firm, and its owners, directors, and officers. I am the person responsible in my firm for the price(s) and the amount of this bid.

I state that:

(1) The price(s) and amount of this bid have been arrived at independently and without consultation, communication or agreement with any other contractor, proposer or potential proposer.

(2) Neither the price(s) nor the amount of this bid, and neither the approximate price(s) nor approximate amount of this bid, have been disclosed to any other firm or person who is a proposer or potential proposer, and they will not be disclosed before bid opening.

(3) No attempt has been made or will be made to induce any firm or person to refrain from bidding on this contract, or to submit a bid higher than this bid, or to submit any intentionally high or noncompetitive bid or other form of complementary bid.

(4) The bid of my firm is made in good faith and not pursuant to any agreement or discussion with, or inducement from, any firm or person to submit a complementary or other noncompetitive bid.

(5) \_\_\_\_\_ (Name of Firm), its affiliates, subsidiaries, officers, directors, and employees are not currently under investigation by any governmental agency and have not in the last four years been convicted or found liable for any act prohibited by state or federal law in any jurisdiction, involving conspiracy or collusion with respect to bidding on any public contract, except as follows:

I state that \_\_\_\_\_ (Name of Firm) understands and acknowledges that the above representations are material and important, and will be relied on by the Pennsylvania Public Utility Commission in awarding the contract(s)/purchase order(s) for which this bid is submitted. I understand and my firm understands that any misstatement in this affidavit is and shall be treated as fraudulent concealment from the Purchasing Agency of the true facts relating to the submission of this bid.

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Signatory's Name)

\_\_\_\_\_  
(Signatory's Title)

SWORN TO AND SUBSCRIBED  
BEFORE ME THIS \_\_\_\_\_ DAY  
OF \_\_\_\_\_ 20\_\_\_\_

\_\_\_\_\_  
Notary Public

My Commission Expires \_\_\_\_\_

**PROPOSAL COVER SHEET**  
**Act 129 Statewide Evaluator RFP-2012-8**

**Enclosed in one package are three separately sealed submittals that constitute the proposal of the Proposer identified below for the above-referenced RFP:**

<b>Proposer Information:</b>	
Proposer Name	
Proposer Mailing Address	
Proposer Website	
Proposer Contact Person	
Contact Person's Phone	
Contact Person's E-Mail	
Proposer Federal EIN Number	

<b>Submittals Enclosed and Separately Sealed:</b>	
<input type="checkbox"/>	Technical Submittal
<input type="checkbox"/>	Disadvantaged Business Submittal
<input type="checkbox"/>	Cost Submittal

<b>Signature</b>	
Signature of an official authorized to bind the Proposer to the provisions contained in the Proposer's proposal:	
Printed Name	
Title	
Date	

**FAILURE TO COMPLETE, SIGN AND RETURN THIS FORM WITH THE PROPOSER'S PROPOSAL MAY RESULT IN THE REJECTION OF THE PROPOSER'S PROPOSAL**

**RFP TRANSMITTAL LETTER**

**Pennsylvania Public Utility Commission  
Bureau of Technical Utility Services  
Act 129 Statewide Evaluator  
RFP-2012-8**

**[Company Name]**  
**[Address]**  
**[City, State Postal Code]**

Dear Mr./Ms. **[Contact]**:

You are invited to submit a proposal for the Act 129 Statewide Evaluator Contract in accordance with the enclosed request for proposal.

All proposals must be submitted to the address stated in Section I-11 of the RFP no later than 3 p.m., January 11, 2013, as stated in the Calendar of Events. Late proposals will not be considered regardless of the reason.

All questions should be submitted by email (with subject line "RFP-2012-8 Statewide Evaluator RFP Question") to Darren Gill at dgill@pa.gov by December 10, 2012, as stated in the Calendar of Events. All Proposers will be provided with written answers to questions asked by any Proposer by December 21, 2012, as stated in the Calendar of Events.

In addition, a pre-proposal conference will be held on Thursday, December 13, 2012 at 1 p.m. in Executive Chambers, 3<sup>rd</sup> Floor, Commonwealth Keystone Building, 400 North St., Harrisburg PA 17120. Questions may also be submitted at the pre-proposal conference, which will also be answered by December 21, 2012. Attendance at the pre-proposal conference is not mandatory.

Sincerely,

Darren Gill  
Issuing Officer/Project Officer  
Deputy Director, Bureau of Technical Utility Services

Enclosure: Request for Proposal

Act 129 Statewide Evaluator Contract

Issuing Office

Pennsylvania Public Utility Commission  
Bureau of Technical Utility Services

RFP-2012-8

  Date  

Act 129 Statewide Evaluator Contract

This Contract is entered into by \_\_\_\_\_ (“Contractor”), EEC Pennsylvania Evaluations (“Contracting Entity”), and the Pennsylvania Public Utility Commission (“Commission”).

**I. Covenants of the Parties.**

The parties to this Contract agree and promise that:

- A. Subject in all respects to the terms and conditions of this Contract and to the duties and limitations contained in the statutory and common law of the Commonwealth of Pennsylvania, the Contractor shall perform as the Act 129 Statewide Evaluator for the Commission. The duties of the Act 129 Statewide Evaluator shall be completed as outlined in and in accordance with the promises, warranties and representations contained in the Contractor’s Proposal (“Proposal”) and the Request For Proposals (“RFP”). The RFP and all exhibits, appendices, addenda, and other attachments thereto, and the Contractor’s Proposal and all exhibits, appendices, addenda, and other attachments thereto are hereby incorporated into this Contract by reference.
  
- B. The EDCs shall cooperate with the efforts of the Contractor and the Contracting Entity shall pay the Contractor promptly upon submission to it of invoices for payment as described below. Subject to the terms and conditions of this Contract and the statutory and common law of Pennsylvania, Duquesne Light Company, Metropolitan Edison Company, PECO Energy Company, Pennsylvania Electric Company, Pennsylvania Power Company, PPL Electric Utilities Corporation, and West Penn Power Company (“EDC or EDCs”) shall make available to the Contractor all employees with the direct knowledge and data necessary for the Contractor to evaluate expeditiously and draw conclusions. Every effort shall be made by the parties to limit disruption to both the EDCs’ ongoing operations and to the performance of the Contractor’s work plan contained in the Proposal and RFP.

- C. The Commission by its agent, the Project Officer and other designated staff, as described below, shall have the right and opportunity to participate actively in the activities of the Contractor and the EDCs, and to this end shall have immediate access to all data, models, and other materials or information provided to the Contractor and the EDCs except that the Contractor may withhold such data, models, materials, or information to which the Commission does not otherwise have a right of access or inspection. The Commission shall be advised if any data, models, materials, or information is being so designated and may contest such designation.

## II. Evaluation Procedures.

### A. Project Officer and Party Representatives.

1. The Commission has designated Darren Gill, Bureau of Technical Utility Services, telephone number (717) 783-5244, and email dgill@pa.gov (and/or his designated alternative) as its staff contact (“Project Officer”) and has authorized him/her to act on behalf of the Commission under this Contract. The Project Officer may appoint members of the Commission staff or its designees to represent him/her as appropriate.
2. The Contracting Entity has designated Donna M. J. Clark, Esquire, telephone number (717) 901-0631, and email dclark@energypa.org as its staff contact (“Contracting Entity’s Representative”) and has authorized her to act as the lead contact on behalf of the Contracting Entity under this Contract.
3. Each EDC designates the following person as its staff contact (“EDC Representative”) and has authorized him/her to act as the lead contact on behalf of the EDC under this Contract:

Duquesne Light Company:	David Defide Tel. (412) 393-6107 Email ddefide@duqlight.com
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Metropolitan Edison Company:	Kurt Turosky Tel. (330) 384-5847 Email turoskyk@firstenergycorp.com
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PECO Energy Company:	Frank J. Jiruska Tel. (215) 841-5227 Email frank.jiruska@exeloncorp.com
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Pennsylvania Electric Company: Kurt Turosky  
 Tel. (330) 384-5847  
 Email turoskyk@firstenergycorp.com

Pennsylvania Power Company: Kurt Turosky  
 Tel. (330) 384-5847  
 Email turoskyk@firstenergycorp.com

PPL Electric Utilities Corporation: Peter D. Cleff  
 Tel. (610) 774-4530  
 Email pdcleff@pplweb.com

West Penn Power Company: Kurt Turosky  
 Tel. (330) 384-5847  
 Email turoskyk@firstenergycorp.com

Contractor will coordinate with each individual EDC Representative when working with a particular EDC. Each EDC Representative shall be given advance notification of the identities of Commission and Contractor personnel who will be on that EDC’s premises and the dates of their visits to specific EDC facilities.

4. The Contractor has designated \_\_\_\_\_ telephone number \_\_\_\_\_, and email \_\_\_\_\_ as its staff contact (“Contractor Representative”) and has authorized him/her to act as the lead contact on behalf of the Contractor under this Contract.
  
5. The Project Officer and Contracting Entity’s Representative shall have primary responsibility and authority on behalf of the Commission and the EDCs, respectively, to administer this contract and to agree upon procedures for coordinating the efforts of the EDCs and the Contractor.
  
6. The parties agree to communicate fully with each other through the designated representatives and to keep each other informed of all pertinent matters and developments relating to the Act 129 Statewide Evaluator Project.
  
7. The Contractor shall provide the Project Officer with reasonable notice of and opportunity to attend all high-level planning meetings with the EDCs.

8. The EDCs will provide an atmosphere conducive to the free flow of information between the Contractor and the EDCs’ employees. Any process which may inhibit employees from expressing their ideas, opinions or suggestions shall be discouraged.

B. Expenses and Payment.

1. Payment. As provided in Section I-31 “Payment” of the RFP and hereafter.
2. The Project Officer shall have the right and opportunity to approve, in whole or in part, each invoice. The basis for the Project Officer’s approval shall be a finding that the expenses are reasonable, necessary and correct and billed in accordance with the provisions of this Contract. Such approval or payment may be withheld if the following items are not included in the invoice:
  - a) A list of the individuals, by name and title, who have worked during the invoice period;
  - b) The hourly rates of these individuals as stated in the Proposal;
  - c) The number of hours spent by each individual;
  - d) A listing by category of materials and supplies purchased during the invoice period;
  - e) A list of transportation lodging, and meal expenses by each individual incurring such costs during the invoice period and the basis for calculating such costs; and
  - f) The specific dates when services were rendered.
3. The approval of the Project Officer may also be withheld as to any costs that are not just, reasonable, or in conformity with costs in the Proposal.
4. The total amount paid the Contractor under this Contract shall not exceed the following amounts except as provided in the RFP regarding approved additional expenditures.

Total Contract Price: \$ \_\_\_\_\_

First Year: \$ \_\_\_\_\_

Second Year: \$ \_\_\_\_\_

Third Year: \$ \_\_\_\_\_

Logging/Metering Studies: \$ \_\_\_\_\_

Baseline Studies: \$ \_\_\_\_\_

EE Market Potential Study: \$ \_\_\_\_\_

5. No expenditures will be reimbursed if they were incurred before the effective date of this contract.
6. All charges for services and other costs charged by the Contractor are subject to review at any time by the Contracting Entity and the Commission.
7. It is presumed that the EDCs will cooperate fully with the Contractor and will provide all relevant data, as well as all employees with the direct knowledge necessary for the Contractor to perform expeditiously its evaluation and draw conclusions. Total payments under this contract will not exceed the total cost quoted in the proposal. However, the total cost may be exceeded if, after the draft Annual and/or Five-Year Reports are released, the EDCs come forth with substantial quantities of new or additional information requiring significant review and analysis by the Contractor. Those costs will be paid in accordance with the payment terms of the Contract; however, those costs will be in addition to and billed separately from the base contract amount at the salary rates provided in the Contractor's Proposal.

### **III. Other Rights of Parties.**

#### **A. Commission's Right to Disapprove Expenditures.**

The Commission shall have the right to approve or disapprove invoice expenditures and may adjust payment to the Contractor for the amount of any disapproved expenditure. The Contractor will not be paid for any cost incurred for services not in compliance with the terms of this contract. Nothing herein shall preclude the Contracting Entity from questioning the reasonableness or propriety of any invoice, or any portion of an invoice, submitted by Contractor, prior to payment of the same.

#### **B. Commission's Right to Make Amendments and Changes to Contract.**

Subject to the terms and conditions of this Contract and to the statutory and common law of the Commonwealth of Pennsylvania, the Commission shall have the right to make changes in the Statement of Work in the Proposal, provided that any such changes are within the general scope of the Statement of Work, that payment for work performed under such changes shall be made pursuant to the Proposal, and that the total cost of this contract is not exceeded. Approval of the Contracting Entity for such changes shall not be required; however, prior to making any such change the Commission will consult with the Contracting Entity.

C. Confidentiality.

1. The parties recognize that it will be necessary for the Contractor to review certain proprietary information of the EDCs. Accordingly, the Contractor, the EDCs, and the Commission have or will execute Nondisclosure Agreements that are substantially similar to the Nondisclosure Agreement attached hereto as Exhibit 1. The Nondisclosure Agreement, including any Nondisclosure Agreement utilized by any EDC which may differ from Exhibit 1, is hereby incorporated into this Contract by reference.
2. The executed Contract, the Contractor's Proposal, and the Annual Report and Five-Year Report may be released by the Commission, subject to confidentiality restrictions. Any other information that is not otherwise public will be released only after consent of the Contractor, the Contracting Entity, and the EDCs.
3. If the release is to the media, the Commission agrees to inform the Contracting Entity and the relevant EDCs prior to such release and to provide a copy of the release to the Contracting Entity and the relevant EDCs.
4. No release of any information concerning the Act 129 Statewide Evaluator Project other than the existence and nature of the Contractor may be made by the Contractor, the Contracting Entity, or the EDCs without the prior written approval of the Commission's Project Officer or his/her designee.

D. Termination.

The Commission reserves the right to terminate this Contract with thirty (30) days notice to the Contractor if the Contractor's performance is, in the sole view of the Commission, unsatisfactory and not in keeping with the Proposal and the RFP, and/or for any material breach of the terms contained herein. In the event of a material breach of the Contract terms, the Project Officer shall inform the Contractor's Representative of the breach. The Contractor shall have ten days in which to cure the breach to the satisfaction of the Commission. This provision shall not be construed as a limitation on remedies by the Commission or the Contracting Entity for breach of this Contract by the Contractor.

**IV. Other Agreements by the Parties.****A. Non-Discrimination Clause.**

During the term of this contract, as it affects any individual employed under this contract, the Contractor agrees as follows:

1. The Contractor shall not discriminate against any applicant for employment, any independent contractor, any socially/economically restricted business, or any other person because of race, color, religious creed, ancestry, national origin, age, sex, or disability.
2. The Contractor shall take affirmative action to ensure that applicants are employed and that employees or agents are treated fairly during employment, without regard to their race, color, religious creed, ancestry, national origin, age, sex, or disability. Such affirmative action shall include, but is not limited to the following: employment upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection of training.

**B. Status of Contractor.**

The parties hereto agree that the Contractor and any agents and employees of the Contractor shall act, in the performance of this Contract, in an independent capacity and not as officers, employees or agents of the Commission, the Contracting Entity, or the EDCs.

**C. Interest of Contractor.**

The Contractor warrants that it presently has no interest and promises that it shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its services hereunder. The Contractor agrees that in the performance of this Contract, it shall not knowingly employ any person having such interest. The Contractor further certifies that no member of the board of the Contractor or any of its officers or directors have such an adverse interest. Contractor personnel who perform the services are employees of the Contractor (or its subcontractors) and the Contractor will be solely responsible for payment of compensation to such persons. The Contractor agrees to indemnify, defend, and hold harmless the Commission, the Contracting Entity, or any EDC for any claim asserted against the Commission, the Contracting Entity, or any EDC alleging that the Commission, the Contracting Entity, or any EDC is an employer, co-employer or joint employer of any Contractor personnel. The Contractor will assume full responsibility for payment of all federal, state, provincial and local taxes,

withholding or contributions imposed or required under unemployment insurance, social security and income tax laws with respect to such persons. Should the Commission, the Contracting Entity, or any EDC be required to pay any amount to a governmental agency for failure to withhold any amount as may be required by law, the Contractor agrees to indemnify, defend and hold harmless the Commission, the Contracting Entity, or any EDC for any amount so paid, including interest, penalties and fines. The Contractor is not an agent of the Commission, the Contracting Entity, or any EDC and has no authority to represent the Commission, the Contracting Entity, or any EDC as to any matters, except as expressly authorized in this Contract.

D. Disputes.

All questions arising respecting any matter pertaining to this Contract or any part thereof or any breach of contract arising thereunder shall be referred to the Project Officer. Any dispute which cannot be settled by negotiations after submission to the Project Officer shall then be submitted to the Commission for resolution. The provisions of this paragraph shall not be construed to limit the remedies of the Commission, the Contractor, and the Contracting Entity for breach of this Contract, nor shall it limit the Commission, the Contractor, and the Contracting Entity's rights to appeal to the Commonwealth Court after resolution by the Commission. This provision shall not be construed as an arbitration provision that provides the Commission with arbitration powers.

E. Conflicts between the Contract, the RFP, and the Proposal.

Whenever a provision of the Proposal conflicts with the Contract or the RFP, the provisions of the Contract and the RFP will prevail over the Proposal. If there is a conflict between the Contract and the RFP, the Contract will prevail over the RFP.

F. Integration Clause.

This Contract, and all exhibits, appendices, addenda, and other attachments thereto, constitutes the entire agreement between the parties, subject to the provisions of paragraph G "Amendments" below. No other agreements, whether oral or written, or outside conditions, warranties, or understandings regarding the subject matter of this Contract shall be deemed to exist for purposes of interpreting this Contract, nor shall any such agreements be enforceable against the Commission, the Contracting Entity, the Contractor, or any EDC.

G. Amendments.

No amendment or modification changing the scope or terms of this Contract shall have any force or effect unless it is in writing and signed by all parties except as provided in this Contract.

H. Applicable Law.

This Contract shall be interpreted, construed, and governed by the laws of the Commonwealth of Pennsylvania. Contractor expressly submits to the personal and subject matter jurisdiction of the Courts of the Commonwealth of Pennsylvania.

I. Assignment and Delegation.

Neither this Contract nor any of its benefits or duties may be assigned or delegated by subcontract or otherwise, except for those subcontracts specifically identified by this Proposal, without prior written approval by the Commission, who shall first consult with the Contracting Entity. Any subcontract shall contain all of the provisions of this Contract.

J. Severability.

If any provision of this Contract is invalid, the remainder of the Contract shall not be affected thereby if the essential terms and conditions of the Contract remain valid, legal and enforceable.

K. Non-Waiver.

No provision of this Contract can be waived by any party unless made in writing and signed by the party against whom waiver is sought; nor shall the failure by any party to, at any time or on multiple occasions, require performance of any provision hereof be construed as a waiver of future enforcement thereof; nor shall waiver by any party of any breach hereof be construed as a waiver of any future breach.

L. Time of the Essence.

Time is of the essence in this Contract and any failure to perform any of the terms hereof in the time and manner specified shall be deemed a material breach of this contract.

M. Effective Dates.

The effective date of this Contract shall be fixed by the Issuing Office after the Contract has been fully executed by the Contractor, the Contracting Entity, and the Commission and all approvals required by the Commonwealth contracting procedures have been obtained.

N. Insurance.

During the performance of the work covered by this Contract, the Contractor shall maintain the following minimum insurance coverage at no additional cost to the Commission, the Contracting Entity, or the EDCs:

1. Workers' Compensation Insurance as required by law.
2. Employer's Liability Insurance (bodily injury) of \$1,000,000 per accident, and Employer's Liability Insurance (occupational diseases) of \$1,000,000 per person and \$2,000,000 in the general aggregate.
3. Comprehensive General Liability Insurance of \$1,000,000 each person; \$1,000,000 each occurrence for bodily injuries; and \$1,000,000 for property damage.
4. Comprehensive Automobile Liability Insurance covering all owned and hired vehicles of \$1,000,000 each person, \$1,000,000 each accident for bodily injuries, and \$1,000,000 each accident for property damage.

The insurance called for above is subject to the normal limitations and exclusions applying to each type of insurance; provided, however, that first dollar coverage shall be provided for each type. The Commission, the Contracting Entity, and all the EDCs (each listed individually by name) will be named as an additional insured on the policies referred to in 2, 3, and 4 above and such insurance shall be endorsed to require the insurer to furnish the Commission, the Contracting Entity and the EDCs with ten (10) days written notice prior to the effective date of any cancellation of insurance.

Upon request, the Contractor shall furnish the Commission, the Contracting Entity, or the EDCs with certificates or other documentary evidence showing that the insurance to be carried by the Contractor in accordance with this paragraph has been arranged.

O. Indemnity.

The Contractor agrees and undertakes to indemnify, defend, and hold harmless the Commission, the Contracting Entity, the EDCs, and their respective agents and employees or subcontractors against all liabilities, claims, damages, causes of action, judgments, costs and expenses, including reasonable attorneys' fees, in any way relating to or arising out of any action or operation of the Contractor, or its agents, employees, or subcontractors under this Contract, including but not limited to personal injury or property damage, including but not limited to injury or damage to the person or property of the Commission, the Contracting Entity, the EDCs, or the Contractor, or their respective agents, employees, or subcontractors, and shall, at the request of the Commission, the Contracting Entity or any of the EDCs, defend any and all actions brought against the Commission, the Contracting Entity or the EDCs, and their respective agents, employees, or subcontractors based upon any such claims or demands. This Indemnity shall not apply relating to any penalty imposed by the Commission on the Contracting Entity or an EDC. The Contractor expressly waives use of the "statutory employer" defenses provided in the Pennsylvania Worker's Compensation Act at 77 P.S. § 481(a) and (b) and 77 P.S. § 52 with regard to this indemnity.

P. **LIMITATION OF LIABILITY.**

IN NO EVENT, WHETHER BASED ON CONTRACT, INDEMNITY, WARRANTY, TORT (INCLUDING NEGLIGENCE OR GROSS NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, SHALL ANY PARTY OR THEIR RESPECTIVE AGENTS AND EMPLOYEES OR SUBCONTRACTORS, BE LIABLE TO ANY PARTY OR THEIR RESPECTIVE AGENTS AND EMPLOYEES OR SUBCONTRACTORS FOR SPECIAL INDIRECT, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES WHATSOEVER INCLUDING, WITHOUT LIMITATION, LOSS OF PROFITS OR REVENUE OR COST OF CAPITAL.

Q. Final Report Copies.

The Contractor shall provide an electronic version of each Final Annual or Five-Year Report that is compatible with the Commission's network software to the Commission and the Contracting Entity for disbursement to the EDCs.

R. Immunity.

Nothing contained in this Contract shall be construed as a waiver of the immunity of the Commonwealth or the Commission against suit.

S. Potential Conflicts of Interest.

In order to ensure an impartial review of the EDCs' Energy Efficiency and Conservation Programs, other than in performance of duties under this Contract, the Contractor or any of its subcontractors, or any parent or related entities to the Contractor or any of its subcontractors, or any of the Contractor's or any of its subcontractors' employees, may not provide evaluation or energy efficiency or conservation services to any of the Pennsylvania-based EDCs during the Contract term. In addition, the contract or will seek review and approval from the Project Officer on a case-by-case basis before contracting with electric distribution utilities located outside of Pennsylvania that are affiliates of Pennsylvania-based EDCs or who share the same corporate parent company. Factors to be considered by the Commission include, but are not limited to, the following: 1) whether the contract oversight for the non-Pennsylvania-based EDC involves the same staff that are involved in contract oversight of the Act 129 program contracts; 2) whether the staff that are involved in the Commission contract are the same or different from the staff that would work on the out-of-state contract; and 3) whether the nature of the work on the out-of-state contract involves EM&V and EE&C program design work or other work such as market research. Requests for review from the Contractor should include information on these factors as well as other factors that may be relevant to potential conflicts of interest.

T. Jurisdiction.

It is understood and agreed that actions undertaken by the Contractor this shall be limited to matters within the jurisdiction of the Commission.

U. Gratuities.

The Contractor, on behalf of itself and its employees, agents, and subcontractors, warrants that no gratuity, payment, gift, service or other item of value has been or will be offered to any Commission, Contracting Entity or EDC employees or to any family member or designee, associate or agent of any Commission, Contracting Entity, or EDC employee. The tendering of any such gratuity, payment, gift, service or item of value to such persons is an act of default and shall give rise to an immediate right of termination by the Commission of this Contract. In addition, the Contractor will be liable to the Commission for any damages, direct, indirect or consequential, as a result of the tendering of any such gratuity, payment, gift, service or item of value to such persons, whether such action is caused by the Contractor, its employees, agents or subcontractors.

V. Employees, Background Checks, Substance Abuse.

1. Contractor shall employ for the work only persons known to it to be experienced, qualified, reliable, and trustworthy. At the request of the Commission staff, EDC staff, or Contracting Entity staff, the credentials of any of Contractor's employees assigned to perform the work shall be submitted to them in advance of such assignment. During the performance of the work, the Commission staff, EDC staff, or Contracting Entity staff may object to any Contractor's employee, who, in their opinion, does not meet these criteria. In such case, Contractor shall at its expense and risk, immediately replace and remove such employee and promptly advise the Commission's Project Officer.
2. Background checks. Contractor shall make best efforts to ensure that Contractor's employees assigned to work on this Project do not have criminal records and are not involved in criminal activity which could create a risk of fraud/embezzlement and/or a risk to the Commission's or EDCs' property and employees, and/or to any EDCs' customers or customers' property.

Contractor will obtain criminal background checks for all employees, including but not limited to employees of all subcontractors, for this Project who will visit or otherwise have physical contact with any of the customers of the EDCs or such customers' premises or property prior to such employee performing work on the Project. Criminal background checks will be checked at least every year for such employees. Contractor will maintain up to date records evidencing such criminal background checks.

Upon actual knowledge of a criminal record or involvement in a potentially criminal activity, including but not limited to threats, harassment, or other abuse, Contractor shall immediately remove any such employee or employees from the work and immediately contact the Project Officer and the Contracting Entity's Representative to inform them of the circumstances. Commission staff, EDC staff, or Contracting Entity staff, at any time, may request Contractor to verify that an employee or employees do not possess a criminal record.

- a. Contractor shall provide certification for each of the Contractor's employees who are authorized as part of the work to have electronic or unescorted physical access to critical cyber assets (as the same are identified from time to time), that such employee (i) has submitted to a Background Check within the past seven years whereby no evidence of a criminal record or criminal activity was discovered; (ii) is subject to a seven-year cycle re-check of the Background Check; and (iii) has received the Contractor-sponsored security awareness training or will receive such training prior to accessing critical cyber assets.

These requirements are subject to audit by Commission staff, EDC staff, or Contracting Entity staff.

3. **Substance Abuse.** Contractor agrees to comply with all applicable state and federal laws regarding a drug-free workplace. Contractor shall make a good faith effort to ensure that all Contractor's employees undertaking work will not be under the influence, purchase, transfer, use or possess illegal drugs or alcohol or abuse prescription drugs in any way. Upon actual knowledge of such activity or any such potential activity, Contractor shall immediately remove any such employee or employees from the work and immediately contact the Project Officer and the Contracting Entity's Representative to inform them of the circumstances.

W. Nondiscrimination/Sexual Harassment Clause.

Pursuant to Management Directive 215.16 Amended, the Contractor agrees:

1. In the hiring of any employee(s) for the manufacture of supplies, performance of work, or any other activity required under the contract or any subcontract, the Contractor, each subcontractor, or any person acting on behalf of the Contractor or subcontractor shall not, by reason of gender, race, creed, or color, discriminate against any citizen of this Commonwealth who is qualified and available to perform the work to which the employment relates.
2. Neither the Contractor nor any subcontractor nor any person on their behalf shall in any manner discriminate against or intimidate any employee involved in the manufacture of supplies, the performance of work, or any other activity required under the contract on account of gender, race, creed, or color.
3. The Contractor and each subcontractor shall establish and maintain a written sexual harassment policy and shall inform their employees of the policy. The policy must contain a notice that sexual harassment will not be tolerated and employees who practice it will be disciplined.
4. The Contractor and each subcontractor shall not discriminate by reason of gender, race, creed, or color against any subcontractor or supplier who is qualified to perform the work to which the contracts relates.
5. The Contractor and each subcontractor shall, within the time periods requested by the Commonwealth, furnish all necessary employment documents and records and permit access to their books, records, and accounts by the contracting agency and the Bureau of Minority and Women Business Opportunities (BMWBO), for purpose of ascertaining compliance with provisions of this Nondiscrimination/Sexual Harassment Clause. Within fifteen (15) days after award of any contract, the

Contractor shall be required to complete, sign and submit Form STD-21, the “Initial Contract Compliance Data” form. If the contract is a construction contract, then the Contractor shall be required to complete, sign and submit Form STD-28, the “Monthly Contract Compliance Report for Construction Contractors”, each month no later than the 15th of the month following the reporting period beginning with the initial job conference and continuing through the completion of the project. Those contractors who have fewer than five employees or whose employees are all from the same family or who have completed the Form STD-21 within the past 12 months may, within the 15 days, request an exemption from the Form STD-21 submission requirement from the contracting agency.

6. The Contractor shall include the provisions of this Nondiscrimination/Sexual Harassment Clause in every subcontract so that those provisions applicable to subcontractors will be binding upon each subcontractor.
7. The Commonwealth may cancel or terminate the contract and all money due or to become due under the contract may be forfeited for a violation of the terms and conditions of this Nondiscrimination/Sexual Harassment Clause. In addition, the agency may proceed with debarment or suspension and may place the Contractor in the Contractor Responsibility File.

X. Contractor Integrity Provisions.

Pursuant to Managerial Directive 215.8 Amended, the Contractor agrees:

It is essential that those who seek to contract with the Commonwealth of Pennsylvania (“Commonwealth”) observe high standards of honesty and integrity. They must conduct themselves in a manner that fosters public confidence in the integrity of the Commonwealth procurement process.

In furtherance of this policy, Contractor agrees to the following:

1. Contractor shall maintain the highest standards of honesty and integrity during the performance of this contract and shall take no action in violation of state or federal laws or regulations or any other applicable laws or regulations, or other requirements applicable to Contractor or that govern contracting with the Commonwealth.
2. Contractor shall establish and implement a written business integrity policy, which includes, at a minimum, the requirements of these provisions as they relate to Contractor employee activity with the Commonwealth and Commonwealth employees, and which is distributed and made known to all Contractor employees.

3. Contractor, its affiliates, agents and employees shall not influence, or attempt to influence, any Commonwealth employee to breach the standards of ethical conduct for Commonwealth employees set forth in the *Public Official and Employees Ethics Act, 65 Pa.C.S. §§1101 et seq.*; the *State Adverse Interest Act, 71 P.S. §776.1 et seq.*; and the *Governor's Code of Conduct, Executive Order 1980-18, 4 Pa. Code §7.151 et seq.*, or to breach any other state or federal law or regulation.
4. Contractor, its affiliates, agents and employees shall not offer, give, or agree or promise to give any gratuity to a Commonwealth official or employee or to any other person at the direction or request of any Commonwealth official or employee.
5. Contractor, its affiliates, agents and employees shall not offer, give, or agree or promise to give any gratuity to a Commonwealth official or employee or to any other person, the acceptance of which would violate the *Governor's Code of Conduct, Executive Order 1980-18, 4 Pa. Code §7.151 et seq.* or any statute, regulation, statement of policy, management directive or any other published standard of the Commonwealth.
6. Contractor, its affiliates, agents and employees shall not, directly or indirectly, offer, confer, or agree to confer any pecuniary benefit on anyone as consideration for the decision, opinion, recommendation, vote, other exercise of discretion, or violation of a known legal duty by any Commonwealth official or employee.
7. Contractor, its affiliates, agents, employees, or anyone in privity with him or her shall not accept or agree to accept from any person, any gratuity in connection with the performance of work under the contract, except as provided in the contract.
8. Contractor shall not have a financial interest in any other contractor, subcontractor, or supplier providing services, labor, or material on this project, unless the financial interest is disclosed to the Commonwealth in writing and the Commonwealth consents to Contractor's financial interest prior to Commonwealth execution of the contract. Contractor shall disclose the financial interest to the Commonwealth at the time of bid or proposal submission, or if no bids or proposals are solicited, no later than Contractor's submission of the contract signed by Contractor.
9. Contractor, its affiliates, agents and employees shall not disclose to others any information, documents, reports, data, or records provided to, or prepared by, Contractor under this contract without the prior written approval of the Commonwealth, except as required by the *Pennsylvania Right-to-Know Law, 65 P.S. §§ 67.101-3104*, or other applicable law or as otherwise provided in this contract. Any information, documents, reports, data, or records secured by Contractor from the Commonwealth or a third party in connection with the performance of this contract shall be kept confidential unless disclosure of such information is:

- a. Approved in writing by the Commonwealth prior to its disclosure; or
  - b. Directed by a court or other tribunal of competent jurisdiction unless the contract requires prior Commonwealth approval; or
  - c. Required for compliance with federal or state securities laws or the requirements of national securities exchanges; or
  - d. Necessary for purposes of Contractor's internal assessment and review; or
  - e. Deemed necessary by Contractor in any action to enforce the provisions of this contract or to defend or prosecute claims by or against parties other than the Commonwealth; or
  - f. Permitted by the valid authorization of a third party to whom the information, documents, reports, data, or records pertain: or
  - g. Otherwise required by law.
10. Contractor certifies that neither it nor any of its officers, directors, associates, partners, limited partners or individual owners has not been officially notified of, charged with, or convicted of any of the following and agrees to immediately notify the Commonwealth agency contracting officer in writing if and when it or any officer, director, associate, partner, limited partner or individual owner has been officially notified of, charged with, convicted of, or officially notified of a governmental determination of any of the following:
- a. Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property.
  - b. Commission of fraud or a criminal offense or other improper conduct or knowledge of, approval of or acquiescence in such activities by Contractor or any affiliate, officer, director, associate, partner, limited partner, individual owner, or employee or other individual or entity associated with:
    - (1) Obtaining;
    - (2) Attempting to obtain; or
    - (3) Performing a public contract or subcontract.

Contractor's acceptance of the benefits derived from the conduct shall be deemed evidence of such knowledge, approval or acquiescence.

- c. Violation of federal or state antitrust statutes.
- d. Violation of any federal or state law regulating campaign contributions.
- e. Violation of any federal or state environmental law.
- f. Violation of any federal or state law regulating hours of labor, minimum wage standards or prevailing wage standards; discrimination in wages; or child labor violations.
- g. Violation of the *Act of June 2, 1915 (P.L.736, No. 338)*, known as the *Workers' Compensation Act*, 77 P.S. 1 et seq.
- h. Violation of any federal or state law prohibiting discrimination in employment.
- i. Debarment by any agency or department of the federal government or by any other state.
- j. Any other crime involving moral turpitude or business honesty or integrity.

Contractor acknowledges that the Commonwealth may, in its sole discretion, terminate the contract for cause upon such notification or when the Commonwealth otherwise learns that Contractor has been officially notified, charged, or convicted.

11. If this contract was awarded to Contractor on a non-bid basis, Contractor must, (as required by Section 1641 of the *Pennsylvania Election Code*) file a report of political contributions with the Secretary of the Commonwealth on or before February 15 of the next calendar year. The report must include an itemized list of all political contributions known to Contractor by virtue of the knowledge possessed by every officer, director, associate, partner, limited partner, or individual owner that has been made by:
- a. Any officer, director, associate, partner, limited partner, individual owner or members of the immediate family when the contributions exceed an aggregate of one thousand dollars (\$1,000) by any individual during the preceding year; or
  - b. Any employee or members of his immediate family whose political contribution exceeded one thousand dollars (\$1,000) during the preceding year.

- To obtain a copy of the reporting form, Contractor shall contact the Bureau of Commissions, Elections and Legislation, Division of Campaign Finance and Lobbying Disclosure, Room 210, North Office Building, Harrisburg, PA 17120.
12. Contractor shall comply with requirements of the *Lobbying Disclosure Act*, 65 Pa.C.S. § 13A01 et seq., and the regulations promulgated pursuant to that law. Contractor employee activities prior to or outside of formal Commonwealth procurement communication protocol are considered lobbying and subjects the Contractor employees to the registration and reporting requirements of the law. Actions by outside lobbyists on Contractor's behalf, no matter the procurement stage, are not exempt and must be reported.
  13. When Contractor has reason to believe that any breach of ethical standards as set forth in law, the Governor's Code of Conduct, or in these provisions has occurred or may occur, including but not limited to contact by a Commonwealth officer or employee which, if acted upon, would violate such ethical standards, Contractor shall immediately notify the Commonwealth contracting officer or Commonwealth Inspector General in writing.
  14. Contractor, by submission of its bid or proposal and/or execution of this contract and by the submission of any bills, invoices or requests for payment pursuant to the contract, certifies and represents that it has not violated any of these contractor integrity provisions in connection with the submission of the bid or proposal, during any contract negotiations or during the term of the contract.
  15. Contractor shall cooperate with the Office of Inspector General in its investigation of any alleged Commonwealth employee breach of ethical standards and any alleged Contractor non-compliance with these provisions. Contractor agrees to make identified Contractor employees available for interviews at reasonable times and places. Contractor, upon the inquiry or request of the Office of Inspector General, shall provide, or if appropriate, make promptly available for inspection or copying, any information of any type or form deemed relevant by the Inspector General to Contractor's integrity and compliance with these provisions. Such information may include, but shall not be limited to, Contractor's business or financial records, documents or files of any type or form that refers to or concern this contract.
  16. For violation of any of these Contractor Integrity Provisions, the Commonwealth may terminate this and any other contract with Contractor, claim liquidated damages in an amount equal to the value of anything received in breach of these provisions, claim damages for all additional costs and expenses incurred in obtaining another contractor to complete performance under this contract, and debar and suspend Contractor from doing business with the Commonwealth. These rights and remedies are cumulative, and the use or non-use of any one shall not preclude the use of all or any other. These rights and remedies are in addition to those the Commonwealth may have under law, statute, regulation, or otherwise.

17. For purposes of these Contractor Integrity Provisions, the following terms shall have the meanings found in this Section.

- a. “Confidential information” means information that a) is not already in the public domain; b) is not available to the public upon request; c) is not or does not become generally known to Contractor from a third party without an obligation to maintain its confidentiality; d) has not become generally known to the public through an act or omission of Contractor; or e) has not been independently developed by Contractor without the use of confidential information of the Commonwealth.
- b. “Consent” means written permission signed by a duly authorized officer or employee of the Commonwealth, provided that where the material facts have been disclosed, in writing, by pre-qualification, bid, proposal, or contractual terms, the Commonwealth shall be deemed to have consented by virtue of execution of this contract.
- c. “Contractor” means the individual or entity that has entered into this contract with the Commonwealth, including those directors, officers, partners, managers, and owners having more than a five percent interest in Contractor.
- d. “Financial interest” means:
  - (1) Ownership of more than a five percent interest in any business; or
  - (2) Holding a position as an officer, director, trustee, partner, employee, or holding any position of management.
- e. “Gratuity” means tendering, giving or providing anything of more than nominal monetary value including, but not limited to, cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind. The exceptions set forth in the *Governor’s Code of Conduct, Executive Order 1980-18*, the 4 Pa.Code § 7.153(b), shall apply.
- f. “Immediate family” means a spouse and any unemancipated child.
- g. “Non-bid basis” means a contract awarded or executed by the Commonwealth with Contractor without seeking bids or proposals from any other potential bidder or offeror.
- h. “Political contribution” means any payment, gift, subscription, assessment, contract, payment for services, dues, loan, forbearance, advance or deposit of

money or any valuable thing, to a candidate for public office or to a political committee, including but not limited to a political action committee, made for the purpose of influencing any election in the Commonwealth of Pennsylvania or for paying debts incurred by or for a candidate or committee before or after any election.

**IN WITNESS THEREOF**, intending to be legally bound, the Contractor, the Contracting Entity, and the Commission, have caused this Act 129 Statewide Evaluator Contract to be approved and executed under their signatures with a duplicate copy being provided to each of the parties.

\_\_\_\_\_  
Contractor Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
EEC Pennsylvania Evaluations Title  
Contracting Entity

\_\_\_\_\_  
Date

\_\_\_\_\_  
Robert C. Gramola  
Director of Administrative Services  
Pennsylvania Public Utility Commission

\_\_\_\_\_  
Date

\_\_\_\_\_  
Bohdan R. Pankiw  
Chief Counsel  
Pennsylvania Public Utility Commission

\_\_\_\_\_  
Date

**Nondisclosure Agreement**

Duquesne Light Company, Metropolitan Edison Company, PECO Energy Company, Pennsylvania Electric Company, Pennsylvania Power Company, PPL Electric Utilities Corporation, and West Penn Power Company and their affiliates (“EDCs”), EEC Pennsylvania Evaluations (“Contracting Entity”), the Pennsylvania Public Utility Commission (“Commission”), \_\_\_\_\_ (“Contractor”), and Contractor's authorized representatives, intending to be legally bound, hereby agree as follows:

1. As part of the Act 129 Statewide Evaluator Contract, it may be necessary for the Contractor to review data, including EDC customer data, books, records, and documents of the EDCs that are considered by the EDCs to be confidential proprietary business information (proprietary information).
2. The proprietary information may include certain information of an affiliate of the EDCs or other party providing information, which is contained within such books, records, and documents.
3. In order to safeguard more effectively the proprietary information, the Contractor will designate certain authorized representative(s) to receive and review the proprietary information submitted by the EDCs or other entity. Said authorized representatives will agree to be bound by this Nondisclosure Agreement and will sign it prior to receiving any proprietary information and will furnish, upon request, to the EDCs or other entity a signed copy of the Nondisclosure Agreement executed by such authorized representative(s). Proprietary information will not be accessible by anyone who has not signed the Nondisclosure Agreement.
4. With respect to proprietary information provided under this Agreement, the Contractor and its authorized representatives shall:
  - (a) Hold the proprietary information in confidence;
  - (b) Restrict disclosure of the proprietary information only to persons authorized under this Agreement (as identified in Paragraph 4) who have a need to know;
  - (c) Use the proprietary information solely in connection with the Contractor's work on Act 129 Statewide Evaluator Contract;
  - (d) except as provided in Paragraph 6 below, not disclose the proprietary information publicly or privately to any third party in any manner, unless such third party has signed this Nondisclosure Agreement; and
  - (e) Advise the Contractor's representatives of their obligation with respect to the proprietary information.
5. The Contractor may make proprietary information available to the Commission's Staff under this Agreement; provided, however, that in the event of disclosure, the Commission's Staff shall

also be bound by the terms of this Agreement. Nothing in this Agreement shall be construed as preventing access by the Commission (outside the scope of the Act 129 Statewide Evaluation) to the data, books, records, and documents of the EDCs as permitted by the statutory and common law of the Commonwealth of Pennsylvania.

6. All proprietary information and copies made thereof provided to the Contractor and Commission's Staff must be returned to the EDCs no later than three months beyond the finalization of the Contractor's Annual or Five-Year Reports.

7. After providing the EDCs an opportunity to comment, either the Contractor or the Commission's Staff may assert at any time that any document claimed to be proprietary is in fact non-proprietary. Any disagreement as to the proprietary or non-proprietary nature of a particular document or information shall be resolved by action of the Commission.

8. Proprietary information that is provided to the Contractor and/or Commission Staff will be protected from disclosure as proprietary information under 66 Pa. C.S. §335(d) until such time as the Commission (or court of competent jurisdiction, if an appeal of a Commission determination is taken) rules that the documents are non-proprietary and, therefore, subject to public disclosure. In determining which documents are subject to public disclosure, the Commission will follow the *Right-to-Know Law*, 65 P.S. § 67.101 et seq., including any future amendments thereto.

9. If the EDCs wish to seek additional measures of protection with respect to the specific proprietary data of a particularly sensitive nature or to claim that specific documents are subject to a privilege that precludes disclosure to any party, then it is incumbent upon the EDCs to demonstrate that need to the Project Officer. In the event the EDCs and the Project Officer are unable to agree, the EDCs may seek a determination from the Commission.

10. The Contractor recognizes that the provisions of this Agreement are vitally important to the welfare of the EDCs and other entities providing information pursuant to the Act 129 Statewide Evaluation and that money damages may not be an adequate remedy for any violation by the Contractor thereof. Accordingly, in the event of any breach or violation by the Contractor of the provisions thereof, the EDCs or other entity may institute and maintain a proceeding to compel specific performance by the Contractor thereof or to issue an injunction restraining such breach or violation hereunder by the Contractor.

11. Nothing in this Agreement shall otherwise affect, abridge, increase, or decrease the statutory authority of the Commission to investigate or inspect the facilities and data, books, records, and documents of the EDCs, or to examine records of the cost to the EDCs' affiliates for providing services or furnishing property to the EDCs (where applicable).

12. Nothing contained in this Agreement shall affect, abridge, increase, or decrease the ability of the EDCs to appeal to the Commonwealth Court to protect its rights.

**IN WITNESS THEREOF**, intending to be legally bound, the Contractor, EEC Pennsylvania Evaluations, the EDCs, and the Commission, have caused this Nondisclosure

Agreement to be approved and executed under their signatures, as Exhibit 1 to the Act 129 Statewide Evaluator Contract, with a duplicate copy being provided to each of the parties.

\_\_\_\_\_  
Contractor

\_\_\_\_\_  
(Date)

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EEC Pennsylvania Evaluations

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(Date)

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Duquesne Light Company

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(Date)

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Metropolitan Edison Company

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PECO Energy Company

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Pennsylvania Electric Company

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Pennsylvania Power Company

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PPL Electric Utilities Corporation

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(Date)

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West Penn Power Company

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
Robert C. Gramola, Director of Administration  
Pennsylvania Public Utility Commission

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
Bohdan R. Pankiw, Chief Counsel  
Pennsylvania Public Utility Commission

\_\_\_\_\_  
(Date)