**EPC Term Sheet**

**Peninsula Clean Energy**

**Public Facilities Solar & Storage Program**

The following are key terms and provisions required by Peninsula Clean Energy (PCE) for a contract arising from this RFP. The terms herein are applicable to Portfolio A – solar energy projects. Portfolio B – solar+storage projects, may have similar terms, but is anticipated to include third party financing as a component of the developer’s services.

At the shortlisting phase, a full draft of PCE’s form EPC agreement will be provided to shortlisted contractors for review. Contractor will then have the opportunity to provide a revision of the Scope of Work and other details and any deviations from the PCE terms. Note that contractors’ revisions will not necessarily be accepted by PCE. The primary scope includes successful engineering, procurement, construction, testing, and commissioning of Behind-the-Meter Solar PV, at approximately 36 local government public facilities in PCE territory as specified in the RFP. The scope of work for Portfolio B will be similar, as detailed in the RFP, for approximately nine local government public facilities.

|  |  |
| --- | --- |
| Key Scope | Contractor will, on a fixed-price, turnkey basis:* Design and engineer the Systems;[[1]](#footnote-2)
* Furnish and procure all equipment, materials, supplies, and labor
* Secure permits, construct, install, start-up, commission, test and interconnect[[2]](#footnote-3) the Systems
* Perform all related activities for the successful delivery, operation, and maintenance of the Systems
 |
| Pricing | Proposed pricing for all services, work and equipment for each System in the portfolio(s) shall be provided by Contractor in the Proposal Form included with the RFP documentation.  |
| Schedule and Milestones | In the proposal form, Contractor will supply a generic schedule for the specified milestones applicable to each site (i.e. number of days from Notice to Proceed for the completion of each milestone).  |
| Milestone Payments | PCE will pay Contractor upon the successful completion of milestones for each site in the portfolio(s). The payment formula will be a specified percentage for a given milestone attainment multiplied by the total agreed price for that site. PCE requires substantial milestone percentages for substantial and final project completion.  |
| Key Milestones | Contractor will be expected to achieve the following key milestone deadlines for each System in Portfolio A:* Commencement of construction within 1 year of notice to proceed
* Substantial Completion by end of 2025
* Final building department sign off and electrical clearing by the applicable AHJ within three (3) years of interconnection application submission (March 2026)
 |
| Time Is Of The Essence & Delay Damages | Contractor agrees that time is of the essence and that retaining the Portfolio A Systems’ eligibility for NEM 2 is a material term of this work. Agreement will include liquidated damages for failure to achieve required deadlines other than due to Force Majeure (including utility and government-caused delays) that reflect the financial harm to PCE and its customers for failure to take service under NEM 2.0. |
| Development Security | Contractor will be required to post a letter of credit or a performance & payment bond. Contractor to provide estimated impacts on contract price for both forms of security in the Proposal Form.  |
| Insurance | Contractor must maintain the minimum insurance levels as specified below: Commercial General Liability Insurance: Coverage shall be on an occurrence form with policy limits of not less than:$1,000,000 Each Occurrence Bodily Injury & Property Damage$1,000,000 Personal & Advertising Injury$2,000,000 General Aggregate to apply on a Per Project basis$2,000,000 Products/Completed Operations AggregateBusiness Auto Liability Insurance:$1,000,000 per accident for bodily injury and property damageWorkers’ Compensation and Employers’ Liability-Stop Gap Insurance in compliance with applicable law and with policy limits of no less than: $1,000,000 Bodily Injury by Accident – Each Accident$1,000,000 Bodily Injury by Disease – Total Limit$1,000,000 Bodily Injury by Disease – Each EmployeeProfessional Liability/Errors & Omissions: $10,000,000/claim; $10,000,000 aggregateBuilders’ All-Risk InsuranceCommercial Umbrella or Excess Liability Insurance:$10,000,000 Each Occurrence$10,000,000 Personal & Advertising Injury$10,000,000 Aggregate (where applicable, following the terms of the underlying)Such policies shall name PCE and each of the project site hosts as additional insureds. |
| Equipment | Solar panels shall be on the BloombergNEF PV Module Tier 1 List, of Maxeon make, or modules of equivalent quality and warranty terms approved in writing by PCE.Inverters shall be of Solaredge make-or inverters of equivalent quality and warranty terms approved in writing by PCE with integrated fleet monitoring capabilitiesSystems shall be equipped with revenue grade metering.Contractor shall cooperate with PCE to determine whether equipment will enable PCE to qualify for the additional ten percent (10%) domestic content requirements under the Inflation Reduction Act. |
| Remote monitoring and communications | Systems shall be remotely accessible by PCE and the end customer to obtain real-time and historical operations and performance information. Data should be downloadable in common industry standard formats at a minimum of 15-minute intervals.  |
| Performance Guarantee | PCE is seeking bids that include a minimum solar energy production guarantee of no less than 95% of expected performance. Battery energy storage systems shall have a minimum uptime guarantee and a minimum round trip efficiency. Battery energy storage systems need to be able to complete one full cycle per day. Details of these guarantees must be specified in Contractor’s proposal. |
| Operations and Maintenance | PCE would like Contractors to provide a bid for Operations and Maintenance services for the Systems for a minimum of 5 years following PTO of Systems, provided that Contractor provides such services. These services shall at a minimum include regular and preventive maintenance, unscheduled maintenance as required, warranty service, and performance and alarm monitoring. |
| Equipment Warranties | Contractor will specify equipment warranties in its Proposal and enforce OEM warranties on behalf of PCE for a minimum of 5 years following execution of a final agreement. |
| Workmanship Warranties | Contractor will warrant that equipment is new and free of defects in design, materials and workmanship, constructed in a good & workmanlike manner, properly tested and functioning, and compliant with all laws and regulations and standard solar industry practices. Contract will warrant its workmanship for 10 years.  |
| Prevailing Wage Labor | The Services contemplated under this procurement include “public works.” Contractor shall comply with California prevailing wage law as applicable to an awarding body. Contractor acknowledges that PCE intends to utilize the maximum amount of investment tax credits and production tax credits available under the Inflation Reduction Act of 2022. Accordingly, Contractor shall comply with the wage and apprenticeship Requirements set by applicable Internal Revenue Code and IRS requirements.  |
| Subcontractors | Contractor may use subcontractors for the completion of the work, provided that subcontractors agree to all the provisions of the agreement between PCE and Contractor. Subcontractors are subject to advance, written PCE approval, which shall not be unreasonably withheld. |
| Liens | Contractor shall under no circumstances assert, or permit any of its subcontractors or agents to assert, a lien on the property of the project site owners. All payment requests shall be accompanied by standard tender of waivers and release of liens. |
| Standard Terms & Conditions | Agreement subject to other standard terms & conditions, including, but not limited to, performance of all services in compliance with applicable law, safety standards, mutual approval of change orders, indemnification by Contractor, representations and warranties and reasonable force majeure provisions.  |

1. Site walkdowns were conducted and preliminary designs and drawings created by experienced solar design firms for the purposes of developing projects and submitting interconnection applications to PG&E to secure NEM2 grandfathering in advance of the April 14, 2023 deadline. Contractor will review and develop final designs (as needed) for each project, maintaining each project’s NEM 2.0 eligibility. In the event Contractor identifies a need for changes to a preliminary design, a Change Order Process will be utilized. [↑](#footnote-ref-2)
2. Interconnection applications have been submitted to PG&E for these projects in order to obtain eligibility for NEM 2.0. [↑](#footnote-ref-3)