

April 21, 2020

Ms. Aida Camacho-Welch
The Secretary of the Board
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Subject: City of Hoboken - Government Aggregation Program
Docket No.: EO20030275
Response to Board Staff's Comments on Draft Bid Documents

Dear Secretary Camacho-Welch:

Thank you and the Board for your comments on the draft bidding documents for the City of Hoboken's Government Energy Aggregation (GEA) Program. As you know, Concord Energy Services (CES) and Commercial Utility Consultants, Inc. (CUC), are the energy agents for Hoboken's GEA Program, and as such we recently conducted a thorough review of the bidding documents in light of comments and suggestions provided by the Board of Public Utilities (letter dated April 9, 2020).

Below is a reference guide for where in our bid documents the Board's staff can find information related to their general comments and concerns regarding GEA Programs; this covers staff's comments 1-15 on pages 2-6 of the Board's comment letter:

#1. Customer Option to Be Excluded from Future GEA Programs

EA: Confirmed compliance: The Supplier Services Agreement provides for a permanent opt-out option under Section 6.01B.5.

#2. Selection of Bidder(s)

EA: Confirmed compliance: In our efforts to obtain pricing that is most advantageous to the Municipality, we ask bidders for a variety of pricing options (reference RFP, pages 13-15, PART

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2: Section 1: Financial Proposal), including a flat rate throughout the term of the contract, and green pricing options as well as terms not specified or requested that the Supplier identifies as potentially advantageous (i.e., 16-month term). While providing bidding results for multiple options makes for a more robust discussion with the Municipality, we think it is vital that they have the complete picture of all options available to their residents at the time of bid. The Request for Proposal on the first page “Proposal Intent” specifically states the program is for a Residential Energy Aggregation program and that the program only includes residential service (RS) accounts. As such, non-residential customers are not eligible for participation/enrollment in this program.

#3. Reimbursement of Lead Agency Actual Costs

EA: Confirmed compliance: Refer to Section 5.01C of the Supplier Services Agreement.

#4. Term of Contract

- a. The term of the contract should be set forth in the request for proposal. If more than one term is under consideration, these terms should be specifically set forth so that the bids can be effectively compared.
- b. Pursuant to N.J.A.C. 14:4-6.10(a)12, the contract should provide that the supplier will return the customers to the LDC at the end of the GEA Program, or if there are consecutive GEA Programs the TPS shall return the customers to the LDC at the end of the last consecutive GEA Program.
- c. Staff points out that while requesting bids for a period greater than 12 months could possibly result in lower bid prices, for electric service, going beyond the time period for which the utility Basic Generation Service (“BGS”) rates are known and, for gas service, going beyond the time period for which the utility Basic Gas Supply Service (“BGSS”) rates are known could result in GEA Program rates that are higher than the utility BGS or BGSS rates if BGS or BGSS rates go down during the contract term. It also makes it more difficult to determine whether the contract provides savings for participants. Staff recommends that the lead agency consider this risk and the impact that this could have on GEA Program participants as part of its program development and bid evaluation.
- d. The bidding documents may permit that other methods of determining the price, rather than fixed price only, be proposed by bidders. Staff recommends that the lead agency consider the increased difficulty of evaluating bids based on alternative pricing models.

EA:

- a. Confirmed compliance: The contract term is identified on pages 2 and 3 of the RFP under the section heading “Contract Term”.
- b. Confirmed compliance: Supplier Services Agreement, Page 8, Section 2.01 Commencement, Duration of Term and Rate, addresses the return of customers to the LDC.
- c. Confirmed compliance: The RFP and Supplier Services Agreement clearly state that service to be provided by Supplier is limited to electric supply only. With regard to contracts longer than 12 months or that go beyond the known BGS-RSCP RS rate, N.J.A.C. 14:4-6.9 (b) states, “A contract providing for electric generation service and/or gas supply service to residential customers shall not set a rate for such service that, at the time of the contract award, exceeds the benchmark price, as determined pursuant to this section, except that the rate for electric generation service may exceed the benchmark price in accordance with (g) below.” The same scenario the Board outlined above can happen during shorter contract

periods that go beyond the time period for which the utility BGS rate is known. With regard to determining whether the contract provides savings for participants, in the event that the utility's published BGS rate should dip below the program rate during the term, Section 7.06F of the Supplier Services Agreement allows the municipality to amend or terminate the contract; further, Section 2.01 of the Supplier Services Agreement requires that, upon termination of the Agreement, the Supplier shall return all customers to their respective LDC.

d. Understood – please see #2 above

#5. Confidentiality

EA: Confirmed Compliance: Confidentiality responsibilities for suppliers are clearly covered under Section 3.05 of the Supplier Services Agreement, and the Municipality's responsibilities with regard to confidentiality are covered under Section 6.02 of the Supplier Services Agreement.

#6. Customer Billing

EA: Confirmed compliance: Utility consolidated billing requirements are noted under Sections 4.01A (pertaining to the customer receiving one bill from the utility for utility and TPS services) and C (pertaining to what will happen if the customer no longer qualifies for utility consolidated billing) of the Supplier Services Agreement. Budget Billing is offered in this GEA Program and requirements are identified for the TPS on pages 7 and 8 of the RFP under the heading Budget Billing and under Section 4.01B of the Supplier Services Agreement. It is the Energy Agent's standing operating procedure to reject bids from suppliers who do not/will not offer budget billing.

#7. Opt-Out Notices

EA: Confirmed compliance: It is our standard operating procedure that when and if an award is made to a winning supplier, the Energy Agent will forward to the Board and Rate Counsel a draft notice which meets all requirements provided in N.J.A.C. 14:4-6.6(r), including, but not limited to, the GEA Program Summary, for use in notifying eligible BGS-RSCP RS customers about the energy aggregation program.

#8. Fixed Price Contracts

EA: Confirmed compliance: The Supplier Services Agreement provides instructions related to Flat Price Contracts in Section 2.01. The Supplier Services Agreement allows for termination per Section 7.06 and a material change only whereas such increase or decrease alters the LDC BGS-RSCP RS price per Section 7.06, letters D and F. Notification requirements are listed in the Supplier Services Agreement under Section 7.06F.

#9. Non-Residential Customers

EA: Confirmed compliance: The Request for Proposal and Supplier Services Agreement both clearly state that participation in this energy aggregation program is limited to residential service (RS) customers only. No non-residential accounts will be enrolled in this program.

#10. E-Procurement Pilot Program

EA: Confirmed compliance: The cover page of the Request for Proposal states that this solicitation is made pursuant to the following laws and regulations, under which New Jersey

Division of Local Government E-Procurement Pilot Program is listed. We acknowledge that the use of the E-Procurement Pilot Program does not relieve us of the responsibility of complying with applicable Board rules, including those covering third party suppliers, government energy aggregation, and the confidentiality of customer specific information.

#11. TPS Responsibilities

- a. Staff recommends including language in the TPS contract that the TPS be familiar with and comply with the applicable provision of Title 48; the Board's rules in N.J.A.C. 14:4 as they relate to a TPS; customer rights pursuant to N.J.S.A. 48:3-85 and N.J.A.C. 14:7, the Renewable Energy Requirements under N.J.S.A. 18:3-87 and N.J.A.C. 14:8, and the utility's customer account services master agreement. Staff further recommends that the TPS contract include acknowledgement by the TPS that it must utilize the current Electronic Data Interchange ("EDI") protocols to flag the customers that it enrolls as part of this GEA program as GEA customers.
- b. Staff recommends that a provision be included in the TPS contract to require that the selected supplier provide the lead agency with the necessary customer information in a specific format regarding all of the customers that it is serving at the end of the GEA program.
- c. If the contract provides that the selected TPS will be performing some of the obligation of the lead agency (for example, sending out the opt-out notifications) the request for bids should require the supplier to include in its bid documents sufficient information and references that will allow the lead agency to pick a supplier based on that review that will be able to adequately perform these obligations.
- d. The TPS contract should include accurate, specific details regarding the services that the TPS will be required to supply to ensure uninterrupted supply to program participants.

EA: TPS responsibilities are identified in Section 3 of the Supplier Services Agreement.

- a. Confirmed compliance: refer to the Supplier Services Agreement: Section 3.01, Section 3.05; further note that gas supply is not included in this particular energy aggregation program. Under the Governing Laws section of the RFP (page 3) we note that solicitations are made pursuant to this specific list of laws and regulations. Section 4.02H of the Supplier Services Agreement addresses compliance with EDI protocols.
- b. Confirmed compliance: refer to the fourth paragraph of Section 4.03 of the Supplier Services Agreement.
- c. Confirmed compliance: refer to "Scope, General Overview, Project Implementation section of the Request for Proposal, and under Section 4.03 of the Supplier Services Agreement.
- d. Confirmed compliance: refer to Sections 3.01 and 7.05 of the Supplier Services Agreement.

#12. Consistency

EA: Confirmed consistency.

#13. Second Round

EA: Confirmed compliance: refer to the fifth and sixth paragraphs of Section 4.03 of the Supplier Services Agreement.

#14. Undeliverable Mail

EA: Confirmed compliance: refer to Section 3.01D of the Supplier Services Agreement.

#15. Executed Contract

EA: Confirmed compliance: It is our standard operating procedure that when and if an award is made to a winning supplier, the EA will provide to the Board and Rate Counsel a copy of the executed contract within three business days of execution.

In regard to BPU staff's comments specific to the City of Hoboken's Government Energy Aggregation Program, found on pages 6 and 7 of the Board's comment letter, we submit the following responses:

#16. City of Hoboken (CHEAP) – Government Energy Aggregation Program:

RFP:

- a. **BPU:** The RFP allows for multiple periods up to twenty-four (24) months. While requesting bids for a period greater than 12 months could possibly result in lower bid prices, going beyond the time period for which the utility BGS rates are known could result in program rates higher than the utility BGS rates in the event BGS rates go down during the contract term. This term also makes it more difficult to determine whether the contract provides savings for the participants.

EA: Confirmed compliance: N.J.A.C. 14:4-6.9 (b) states, "A contract providing for electric generation service and/or gas supply service to residential customers shall not be set at a rate for such service that, at the time of the contract award, exceeds the benchmark price, as determined pursuant to this section, except that the rate for electric generation service may exceed the benchmark price in accordance with (g) below. (g) A contract providing for electric generation service and/or gas supply service to residential customers under a government-private energy aggregation program may set a rate for such service that is higher than the benchmark price only if both of the following criteria are met: 1. The electricity provided contains a percentage of class I and class II renewable energy, as defined at N.J.A.C. 14:8-1.2, that exceeds the applicable percentage required under the renewable portfolio standards at N.J.A.C. 14:8-2; and 2. The participating municipality notifies all residential customers that will participate in or are eligible to participate in the program that an electricity rate higher than the benchmark price is under consideration. This notice shall be provided through the customer opt-out notice letter required under N.J.A.C. 14:4-6.5(c) and 6.6(q)." Similarly, BGS-RSCP price drops can happen at any time and have happened within existing contract periods. I.e: PSE&G RS rate decrease effective July 2019 which occurred after new effective rates were established and posted after the BGS Auction for June 2019.

- b. **BPU:** Per NJAC 14:4-6.8(b), an estimated energy amount needed as well as any fee amounts should be transparent in the RFP.

EA: Confirmed Compliance: the estimated amount of energy needed that will be provided by PSE&G will be included in the final RFP that will be provided to NJBPU licensed Third party Suppliers as will CES/CUC's Energy Agent Fee.

- c. **BPU:** The RFP provides that this is residential, however, it is not stated whether or not the program will serve government facilities and if so, the estimated energy costs associated with government facilities as per N.J.A.C. 14:4-6.8(b).

EA: The RFP clearly states that this program is limited to residential service (RS) accounts. As such, no government facilities are eligible for participation in the program.

- d. **BPU:** “Administrative Fee” – Municipalities may be reimbursed by the TPS for certain costs the municipality incurs while operating the energy aggregation program as per N.J.A.C. 14:4 6.8(e). These costs must be “actual” and “reflected in invoices or vouchers” paid by the municipality as per N.J.A.C. 14:4-6.8(d).

EA: Confirmed Compliance: CES/CUC will confirm all costs submitted by the Municipality are “actual” and will request appropriate back up documents prior to sending to the awarded Third Party Supplier for the Program.

- e. **BPU:** The Energy Agent Fee amount is unclear as the rate that is to be paid by the selected TPS is not transparent.

EA: Confirmed Compliance. The Energy Agent Fee will be included in the final version of the RFP that is provided to NJBPU licensed Third Party Suppliers.

Agreement:

- a. **BPU:** Section 2.01E: This section provides that the “Agreement is not extended so that it runs for more than a total of five (5) consecutive years.” Despite the preceding sections permitting the municipality to extend the contract if extension provides participants with savings relative to the utility’s Basic Generation Service Residential Small Commercial Pricing (“BGS-RSCP”), it is unclear what the process would be for extending the program for up to five (5) years. If the contract were extended for a long period of time without going out to bid, it is unclear how the selection process would produce the most advantageous pricing for residential customers and how the aggregator would assure the participants that they are receiving the most advantageous pricing.

EA: Confirmed compliance: In accordance with N.J.S.A. 40A:11-15, the Supplier Services Agreement Section 2.01 states:

“The parties may renew this agreement as follows:

- A. The Municipality adopts a resolution to renew this Agreement, and the resolution includes a finding by the Municipality that the services are being performed in an effective and efficient manner, and that the extension and/or renewal agreement will provide the Program Participants with savings relative to applicable BGS-RSCP;”

As the Energy Agent, we will monitor the energy market and provide updates to the aggregator on potential program extension opportunities as they become available. Any extensions must provide a continued savings to the residents. The process is also outlined in the Request for Proposal, Part 3 (pages 16-17).

- b. **BPU:** Section 4.03: It is unclear what the additional opt-out processes would be.

EA: Confirmed Compliance: Please refer to paragraph two of Section 4.03 which reads:

“The written notice will provide processes for residents wishing to opt out of the GEA program. At a minimum process shall include a return mailer – either a tear-off form and return postage paid envelope or separate postage paid postcard – that residents can complete and mail back to the Supplier or Energy Agent. A bar code shall be utilized and imbedded with customer account number and placed on the

return mailer. Supplier will also provide a toll-free telephone number dedicated to GEA programs that residents wishing to opt-out of the program can call. The Energy Agent will also provide their telephone number(s) for residents to call should they have questions about the program or wish to opt-out or opt-in to the program. The Energy Agent will provide residents access to a web portal where they can opt in and out of the program during the contract period; the portal immediately notifies both the Energy Agent and the Supplier via email of the opt-out or opt-in request.”

- c. **BPU:** Section 5.01B: The Agreement provides for a per kWh payment by the supplier to the energy agent as well as a one-time fee of \$2.00 per eligible BGS-RSCP residential service account as identified by the LDC regardless of whether or not a resident chooses to participate. The Agreement provides that this charge is for costs associated with the outreach program such as town hall meetings, advertising, and handout materials needed in order to educate Program Participants. Staff points out that additional energy agent fees, regardless of participation status, may result in lesser savings for CHEAP participating ratepayers. Further, Staff recommends that if the CHEAP Program is to include per customer charges payable to the energy agent, these charges should be designed to be per participant charges, rather than per eligible customer charges. This would incentivize the energy agent to improve its advertising and customer outreach efforts in order to attract more customers to participate and ultimately save more customers money.

EA: CES/CUC will take the Staff’s comments into consideration.

- d. **BPU:** Per N.J.A.C. 14:4-6.10(a)12, the Agreement should include a provision that the TPS return the customers to the LDC at the end of the GEA Program.

EA: Confirmed compliance: The second sentence of the second full paragraph on Page 8 reads: “Pursuant to N.J.A.C. 14:4-6.10(a)12, Supplier shall transfer all residential accounts to the BGS service provided through the respective LDC by the first meter read after the applicable Contract Termination Date, and Supplier will provide the Municipality with a final Participant list, in Microsoft Excel format.”

The individual responsible for the submission of this document is:

Ms. Tara Pasca, CEP
Concord Energy Services
Manager, Energy Services Government Programs
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Voorhees, NJ 08043
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The following individual from the municipality has been designated by the municipality's governing body with respect to matters related to the government energy aggregation program:

Jennifer S. Gonzalez, AICP, PP, CFM, ENV SP, LEED GA
City of Hoboken
Director of Environmental Services, Chief Sustainability Officer
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This government energy aggregation program is limited to residential only for electric. Provided that the municipality is successful at auction on June 3, 2020, the City of Hoboken currently anticipates that the government energy aggregation program will be implemented by February 1, 2021. It is estimated that there are 26,576 eligible customers.

Best regards,

A handwritten signature in blue ink, appearing to read "Tara Pasca", with a stylized flourish at the end.

Tara Pasca, CEP
Manager, Government Programs

Enclosure

Copy: Aida Camacho-Welch, Secretary, Board of Public Utilities
Eric Hartsfield, Director Division of Customer Assistance, Board of Public Utilities