

ILLINOIS POWER AGENCY
Indexed REC RFP

**Invitation to Comment on
Proposed Contract Form and Preliminary Proposal Requirements**

Background

Public Act 102-0662 (the “Climate and Equitable Jobs Act” or “CEJA”) was signed into law and became effective on September 15, 2021. CEJA provides for the procurement of Indexed Renewable Energy Credits (“RECs”) through 20-year delivery contracts. In accordance with Section 16-111.5(b)(5)(ii)(B) of the Public Utilities Act, the Illinois Power Agency (“IPA”) developed a revision to its Long-Term Renewable Resources Procurement Plan (“2022 Long-Term Plan”) and filed this plan with the Illinois Commerce Commission (“ICC” or “Commission”) on March 21, 2022. The Commission released a Final Order approving the 2022 Long-Term Plan with modifications on July 14, 2022.

As approved by the ICC, the 2022 Long-Term Plan provides for a procurement of RECs from new utility-scale wind projects (projects over 5 MW), new utility-scale solar projects (projects over 5 MW), and new brownfield site photovoltaic projects this Summer 2023 (“Summer 2023 Indexed REC RFP”). The quantities to be procured are 1,750,000 RECs delivered annually from new utility-scale wind projects, 1,000,000 RECs delivered annually from new utility-scale solar projects, and 65,000 RECs delivered annually from new brownfield site photovoltaic projects. NERA Economic Consulting serves as the Procurement Administrator for the Summer 2023 Indexed REC RFP. The calendar for the Summer 2023 Indexed REC RFP is available on the procurement website [here](#).

Comment Process Timeline

On January 20, 2023, the IPA and the Procurement Administrator issued a Request for Stakeholder Feedback to seek input on structural barriers that may have limited participation in the Spring and Fall 2022 Indexed REC Procurement events. On February 15, 2023, the Procurement Administrator and the IPA held a stakeholder workshop to provide stakeholders an additional opportunity to provide feedback. The stakeholder workshop presentation and recording, as well as responses to the January 2023 request for stakeholder feedback, are posted [here](#).

On March 3, 2023, the Procurement administrator posted the (a) First Draft Indexed REC Contract and (b) Draft Preliminary Proposal Requirements for the Summer 2023 Indexed REC RFP. Appendix A provides a summary of the key changes to the contract terms and proposal requirements used in the prior Indexed REC procurement event.

Two rounds of written comments have been planned in connection with the finalization of the Summer 2023 Indexed REC RFP Rules and Indexed REC Contract. This is the request for the first round of written comments on the draft contract terms and preliminary proposal requirements. A second draft of the contract and Indexed REC RFP

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is expected to be posted on March 30, 2023 that incorporates stakeholder input from this first round. A separate announcement related to the second round of written comments will be made when the second draft contract and draft RFP documents have been posted. Please see the calendar of events [here](#).

Upcoming Workshop

Between the first and second round of written comments, a virtual stakeholder workshop is planned to discuss the comments received in this first round of written comments and the changes incorporated in the second draft contract and RFP requirements.

Date and Time:

Tuesday, April 4, 2023 at 2:00PM-3:00PM Central Time.

Meeting link:

https://owg.zoom.us/webinar/register/WN_wskIiXBuQqe7NPf1Z2dPBA

Webinar ID: 922 0997 8607

Passcode: 675380

Join by Phone:

+1 267 831 0333

Webinar ID: 922 0997 8607

Passcode: 675380

Invitation to Comment

On March 3, 2023, the Procurement Administrator posted the First Draft Indexed REC Contract and Draft Preliminary Proposal Requirements for the Summer 2023 Indexed REC RFP.

For convenience of stakeholders, Appendix A provides a summary of the key changes to the contract terms used in the prior Indexed REC RFP. A redline showing changes between the draft contract proposed and the contract used in the prior procurement event has also been posted.

Comments are welcome from both participants of past procurement events for RECs, as well as from other interested parties. To facilitate the reviewer's understanding and consideration of the comments, stakeholders are strongly encouraged to provide comments in the form of redlines against the posted documents along with explanatory notes either in a separate document or highlighted in tracked changes.

The Procurement Administrator invites stakeholder feedback on any aspect of the posted documents and also seeks feedback on Topics 1-3 below.

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Topics 1-3 are listed in Appendix B, accompanied by specific questions on which feedback is sought. Commenters need not respond to every question (some may not be applicable) and commenters should not feel limited by these questions in providing feedback.

The timeline and process for interested parties to provide comments is as follows:

- Please submit an attachment with your comments on the First Draft Indexed REC Contract and the Draft Preliminary Proposal Requirements by email to the Procurement Administrator at: Illinois-RFP@nera.com
- Please provide telephone and e-mail contact information in the event that the Procurement Administrator seeks clarification regarding your comments.
- If providing feedback on the First Draft Indexed REC Contract, please submit your comments with track changes in Microsoft Word. We strongly encourage you to provide explanatory notes either in a separate document or highlighted in tracked changes.
- If providing feedback on Draft Preliminary Proposal Requirements that are not included in Topics 1-3 below, please include a reference to the section name, from the left-hand column of the respective table, that is applicable to the requirement for which you are providing comment(s).

The deadline to provide written comments is on Friday, March 17, 2023 and should be sent to Illinois-RFP@nera.com

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

Some elements of the Indexed REC RFP are prescribed by Public Act 102-0662 and the 2022 Long-Term Plan and cannot be changed.

Please direct all questions to the Procurement Administrator at: Illinois-RFP@nera.com

Appendix A

Key Contract Changes for Summer 2023 Indexed REC RFP

The list below includes contract modifications aimed to streamline contract administration processes, respond to stakeholder feedback, and to clarify contract provisions. This list is not exhaustive and interested parties are encouraged to review the redline document that has been posted showing changes between the draft contract proposed and the contract used in the prior Indexed REC RFP.

1. **Project Size Clarification:** Clarity has been provided within the contract to explicitly state that there is no prohibition to Project size changes between the RFP and contract term. (See Section 2.1(a)).
2. **Initial REC Delivery Deadline Extensions.** The period of each extension allowed to be granted by the IPA is now extended from six months to one year at a time. (See Section 2.4(a))
3. **Delivery Obligations:** The contract now allows for a one-time amendment of the RFP Project Percentage prior to the establishment of the Standing Order so as to provide additional flexibility for Seller to manage its delivery obligations. The RFP Project Percentage specifies the percent of a Project's RECs allocated to the contract (thereby allowing for other off-takers). RFP Project Percentage cannot be modified subsequent to the initial establishment of the Standing Order. (See Section 1.93, Section 2.3(b)(i)).
4. **Collateral Requirements**
 - a. With respect to a Utility-Scale Solar Project or a Brownfield Site Photovoltaic Project, the minimum Collateral Requirement has been reduced from \$50,000 to \$20,000 under a contract. (See Section 1.15).
 - b. The Collateral Requirement under the Indexed REC Contract is updated to be due within eight Business Days of notice from Buyer, instead of five Business Days. This allows for cash posted as bid assurance collateral under the RFP to be used to meet the performance assurance requirement under the contract without needing to post additional cash separately (See Sections 7.1, 9.2(d), 9.2(f)).
5. **Force Majeure:** If Seller is unable to complete construction of the Project due a Force Majeure event, Seller may provide such notice to the Buyer and IPA for the early termination of the contract and return of its performance assurance. In connection with this, the timeline for any objection to the Force Majeure claim is extended from 10 business days to 20 business days. Any dispute of the existence of Force Majeure by Buyer shall be subject to the concurrence of the IPA. (See Section 10.1).

6. Minimum Equity Standard (MES)

- a. The contract clarifies that MES requirements shall apply for Construction Activities occurring on or after December 15, 2022, consistent with the timeline for the application of MES under the prior contract and the Long-Term Plan. (See Section 6.4(a)).
 - b. If a Seller is an Equity Eligible Contractor, then Seller is deemed to have met the MES. The contract now provides that such EEC Seller is not subject to the MES reporting requirements. (See Section 6.4(d)).
- 7. Projects in Energy Transition Community Grant Areas:** Under the 2022 Long-Term Plan, Projects located entirely within Energy Transition Community Grant areas will qualify for a bid reduction in the bid evaluation procedure. The Summer 2023 Indexed REC RFP is the first procurement event in which this selection criteria is implemented. As such, provisions related to such projects are introduced in the draft contract (see Sections 1.35, 2.2(e), 2.5(c) and Product Order).

Appendix B

TOPIC 1: Delivery Obligations under the Indexed REC Contract

In addition to other flexibilities already included in REC delivery obligation, the draft contract now allows for a one-time amendment of the RFP Project Percentage prior to the establishment of the Standing Order so as to provide additional flexibility for Seller to manage its delivery obligations. The RFP Project Percentage specifies the percent of a Project's RECs allocated to the contract (thereby allowing for other off-takers).

During the stakeholder workshop held on February 15, 2023 (please see the stakeholder workshop presentation and stakeholder workshop recording posted [here](#)), the Procurement Administrator explained key considerations associated with delivery obligations under the Indexed REC Contract. These considerations include but are not limited to; ensuring bid quantities are committed obligations, allowing for flexibility to optimize and to address shortfalls, and avoiding optionality and allowing indexed REC mechanism to function.

The Procurement Administrator and the IPA are interested to understand if the various provisions related to REC Delivery Obligations have adequately addressed stakeholder concerns and if not, what other flexibility would be appropriate that would be consistent with the above considerations as discussed in the stakeholder workshop.

Questions:

1. If the current delivery obligations are too stringent, what additional flexibility would be appropriate? Please provide your suggested edits in redline to the draft contract document, and provide specific examples and explanations on how the suggested edits satisfy the key considerations listed above.
2. Does the addition of the one-time change to the RFP Project Percentage add the additional flexibility requested under the Contract?

TOPIC 2: Pre-Energization Risks and Flexibility

The contract specifies an initial REC delivery deadline, and allows for such deadline to be extended. The draft contract now provides that the maximum period of each extension request under Section 2.4 be for one year at a time (extended from six months at a time). Additionally, the contract provides for an early termination for Force Majeure claims under Section 10.1. if, due to Force Majeure, Seller is no longer able to complete the construction of the Project.

Questions:

1. Are there other risks that are not adequately addressed through these edits?
2. What additional flexibility, would be appropriate? Please provide your suggested edits in redline to the draft contract document, and provide specific examples and explanations on what these suggested edits are intended to address.

TOPIC 3: Minimum Equity Standard Proposal Requirements

The Seller will be required to acknowledge that for a Project that is not operational as of December 15, 2022, a Minimum Equity Standard of 10% applies to the Project Workforce for each delivery year in which Construction Activities are carried out through the Date of First Operation. **This means that 10% of the Project Workforce must be comprised of Equity Eligible Persons for each such Delivery Year.** As defined in the Act, “Equity Eligible Persons” (or “EEP”) means persons who would most benefit from equitable investments by the State designed to combat discrimination, specifically:

- (a) persons who graduate from or are current or former participants in the Clean Jobs Workforce Network Program, the Clean Energy Contractor Incubator Program, the Illinois Climate Works Pre-apprenticeship Program, Returning Residents Clean Jobs Training Program, or the Clean Energy Primes Contractor Accelerator Program, and the solar training pipeline and multi-cultural jobs program created in paragraphs (a)(1) and (a)(3) of Section 16-108.12 of the Public Utilities Act;
- (b) persons who are graduates of or currently enrolled in the foster care system;
- (c) persons who were formerly incarcerated; and
- (d) persons whose primary residence is in an Equity Investment Eligible Community as defined in Section 1-10 of the IPA Act.

Optional! If Construction Activities have not yet started, the Seller **may, but is not required to,** commit to an Equity Level (%) greater than the 10% Minimum Equity Standard in order to qualify for the bid evaluation price reduction described in paragraph 2.18 of the Draft Preliminary Proposal Requirements.

One of the requirements to qualify for the bid evaluation price reduction is for the Bidder to provide documented evidence related to a portion of the EEPs that would be part of the Project Workforce during the delivery years in which Construction Activities are performed up to the point of the Date of First Operation. Such documented evidence includes:

- Letter(s) of intent to negotiate or contract with contractor(s) or subcontractor(s) that currently employ EEP(s) that would be part of the Project Workforce
- Evidence that the Bidder or Seller currently employs EEPs that would be part of the Project Workforce

The Procurement Administrator posted a draft version of the minimum requirements related to this documented evidence as Appendix 14 to the RFP Rules [here](#).

Questions:

1. Please provide any feedback you may have on the draft minimum requirements provided in Appendix 14.
2. Is requiring documented evidence related to **50%** of the Equity Level (%) commitment an appropriate level at the time of submission of the Part 1

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Proposal (prior to submitting the bid)? If not, what percentage is more appropriate? For example, if the Equity Level (%) stated in the Part 1 Proposal is 20% and the projected number of workers in the Project Workforce during this time period is 100 workers, then documentation related to 10 EEPs is required ($100 * 20% * 50%$).

3. Given that the strike price for a Project that submits an Equity Level (%) greater than 10% will be reduced for purposes of bid ranking, assurances must be provided that the Bidder will meet this commitment. Is there other evidence that could be provided during the Proposal process that would provide assurance that the Bidder will meet the Equity Level (%)?