



GOVERNMENT OF BERMUDA

MINISTRY OF PUBLIC WORKS  
MINISTRY OF ECONOMIC DEVELOPMENT

**Request for Proposals**  
**Development of a 6MW<sub>AC</sub>**  
**Solar PV Facility at the Finger**  
**Bermuda**

**Instructions to Proponents (ITP)**

**Date: 02/15/2017**

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## Introduction and General Provisions

### Project Background

The Government of Bermuda represented by the Ministry for Public Works and the Ministry of Economic Development, (hereafter known as “the Government”) is making available a Government owned property located on a portion of the narrow peninsula known as the Finger on St. David’s Island in Bermuda for a solar photovoltaic (PV) power generation facility (“the Project”). This approximately 15-acre property will be leased to the selected independent power producer (IPP), for a period just short of 21 years.

***The Government is seeking proposals from Qualified Proponents (“Proponents”) only.*** Qualified Proponents are those who have passed the Request for Qualifications (RFQ) stage, and have been invited to participate in the bidding process by the Government. Such Proponents through this Request for Proposals (RFP), will have the opportunity to submit a proposal to undertake the Project.

The Selected Proponent in accordance with the RFP and Instructions to Proponents (ITP) (as defined below), will be responsible for designing, procuring of all materials, building, financing, owning, operating, and maintaining the:

- 6MW<sub>ac</sub> utility-scale solar PV facility, located on the leased Government property known as the “Finger”
- interconnection line connecting the facility to Naval Air Station Substation (NAS).

The IPP will be able to sell the energy produced to the local electricity utility company (Bermuda Electric Lighting Company (BELCO)) on a per-kilowatt-hour basis for a period of 20 years. In addition, the IPP will be responsible for decommissioning the facility and restoring the site to a pre-agreed state at the end of the lease term.

### The Request for Proposals

This Request for Proposals consists of the collection of documents described below and any other documents that may be issued by addenda hereto, in each case, as such documents may be revised, amended, supplemented or otherwise modified:

- This document, including all Exhibits and Forms attached hereto, collectively, known as “Instructions to Proponents” (ITP);
- The draft Power Purchase Agreement;
- The draft Connection Agreement;
- The draft Implementation Agreement;
- The draft Agreement to Lease and a draft Lease;
- The draft Letter of Credit;
- The Technical Evaluation Criteria;
- The draft Site Map and other relevant maps;
- Reports from the prefeasibility assessments conducted: namely, an Environmental Fatal Flaw Analysis and a Preliminary Technical Assessment;

- The Reference folder containing a draft template for the Bulk Generation Licence, a list of indicative approvals and permits to obtain, information on the approval process for permits and approvals, relevant laws, and other items;
- Announcements; and
- Q&A.

Note that additional reports and/or studies that the Government has discretion to provide will not be considered part of the RFP documents.

The Procurement Process will be carried out in accordance with the terms and conditions described in the RFP, including the Instructions to Proponents. However, the Government retains the right in its sole and absolute discretion to make all decisions regarding this Procurement Process, including to:

- Modify or terminate the Procurement Process;
- Determine whether a Proposal complies with the RFP requirements;
- Evaluate a Proposal; or
- Accept or reject any Proposal.

Neither the Government nor any of its employees, officers, members or advisors shall be held liable for the Government taking any of the actions described in the above paragraph.

### **The Instructions to Proponents**

The Instructions to Proponents has two parts:

- **Part 1 – Bidding Procedure** sets out how the Government will run the Procurement Process and the procedure that Proponent must follow in participating in the Process
- **Part 2 – General Terms** sets out the general terms and conditions that apply to the Procurement Process.

The Appendices attached to this RFP are the template forms and documents that Proponents must use when submitting Proposals. ITP 1.4 contains a table listing all the documents a Proposal must include. Proposals that do not follow these templates will be rejected.

Any Proposal submitted will be deemed to be a contractual offer capable of acceptance, which will give rise to a binding Agreement to Lease, Lease, and Implementation agreement with the Government and a PPA and Connection Agreement (together “Project Agreements”) with BELCO, if accepted on its terms.

The Instructions to Proponents use capitalized terms that are defined in ITP 2.1.

This ITP will be published on the Government Portal at [www.gov.bm/Procurement](http://www.gov.bm/Procurement). Addenda to the ITP will also be published on the Government Portal. The remaining RFP documents and any Addenda thereto, shall be provided to Proponents invited to submit a proposal, via a secure data room.

## Instructions to Proponents

### 1 Bidding Procedure

#### 1.1 Scope of Proposals

Proposals must be for a project to design, finance, procure materials, build, own, operate and maintain, a (i) 6MW<sub>AC</sub> solar PV generation facility on the Finger in Bermuda (ii) an interconnection line connecting the Naval Air Station (NAS) Substation to the solar facility. The Proponent's Proposals must demonstrate a project capable of meeting all requirements set out in this RFP.

#### 1.2 Proponent's Responsibilities

Each Proponent is solely responsible for:

- Carefully examining the RFP and fully informing itself of all matters that could affect its participation in the Procurement Process or its Proposal;
- Conducting independent due diligence on the Project, including technical feasibility and site feasibility, the energy supply situation in Bermuda, and all other relevant matters;
- Requesting written clarification or interpretation of any perceived discrepancy, deficiency, ambiguity, error or omission contained in the RFP, or of any provision that such Proponent fails to understand.

The submission of a Proposal shall be considered *prima facie* evidence that the Proponent has made the above described examination and is aware of the conditions to be encountered in performing the work defined under the Project.

As part of their Proposal, Proponents must complete and submit a Proponent Certificate in the form attached in Appendix A. Amongst other things, under the Proponent Certificate, the Proponent acknowledges that it has reviewed and unconditionally accepts the terms and conditions of the RFP.

Failure to observe any of the above responsibilities shall be at the Proponent's risk, and the Government will provide no relief for any error or omission.

Proponents will receive no payment in connection with the preparation and submission of a Proposal.

#### 1.3 Proponent Requirements

A Proponent must fulfil the requirements set out in this section (the "Proponent Requirements") to have its Proposal considered. Failure to meet requirements may result in disqualification. Additionally, in connection with these requirements, the Proponent must submit forms set out in ITP 1.4.

### General Requirements

- (a) A Proponent must, as stated in their Request for Qualifications Submission, continue to be:
  - the same private, public or government owned legal entity; or

- any combination of the above entities ('Partners') in the form of a Consortium with the formal intent, as evidenced by a letter of intent, to enter into an agreement or under an existing agreement.

In the case of a Consortium:

- i. all parties must be jointly and severally liable,
  - ii. the limit to the number of Partners in a Consortium is three (3), and
  - iii. the Partners of a Consortium are the same as in the RFQ stage submission
  - iv. any Subcontractors named at RFQ stage may be the same or different. The Proponent must state the names of said subcontractors they wish to include in the Proposal, if known.
  - v. A Partner in a Consortium shall not, directly or indirectly, participate in any capacity on more than one Proponent's team, including as a subcontractor
  - vi. the Consortium must nominate a Representative who shall have the authority to conduct all business for and on behalf of any and all the partners of the Consortium during the bidding process and, in the event the Consortium is awarded the contract, during contract execution
  - vii. the Representative must be authorized, through a Power of Attorney, by all other members of the Consortium to act on their behalf and
  - viii. the Consortium must provide an undertaking that there will be no change in the Constitution of the Consortium within the Proposal Validity Period (noted in ITP 1.10) without the Government's prior written consent.
- (b) A Proponent shall designate one (1) individual to be its authorized representative responsible for contact with the Government during the procurement, the "Proponent Representative". Unless otherwise notified to the Government in writing, the authorized representative identified by each Proponent on the Forms included with its Proposal submission shall be deemed to be such Proponents' Representative. At any time, if a Proponent wishes to change the individual then designated as its Proponent Representative, such Proponent shall notify the Government Representative by e-mail ([airportsolarproject@gov.bm](mailto:airportsolarproject@gov.bm)) of such change and the name, address and other contact information of such new designated individual.
- (c) A Proponent is responsible for keeping the Government informed of any change to its email addresses. If a Proponent fails to inform the Government of such a change, it waives its right to be informed via any subsequent email until it provides a valid address.
- (d) The Proponent must not collude with other Proponents, or have a conflict of interest. Proponents may be considered to have a conflict of interest if any of the following conditions hold:

- i. They have been involved in or currently participate in advising the Government on this Procurement
- ii. They are, or are affiliated to, BELCO and or the Ascendant Group.

Proponents who have a potential conflict of interest must have proposed a Firewall Agreement that was approved by the Government during or before the qualification stage.

Proponents are also prohibited from receiving any advice or discussing any aspect relating to the Project or procurement of the Project with any person or entity listed in 1.3 (b) parts (i) and (ii), outside of the agreed communication channels.

Proponents have an obligation to disclose any situation of actual or potential conflict that impact their capacity to deliver on the contract, or that may reasonably be perceived as having this effect. Failure to disclose said situations may lead to rejection of the Proponent, the Proposal, or eventual termination of the contract.

- (e) The Proponent may have the nationality of any country. The Proponent shall be deemed to have the nationality of a country if the Proponent is a citizen, or is constituted, incorporated or registered and operates in conformity with the provisions of the laws of that country, as evidenced by its Articles of Incorporation or Documents of Constitution, and its Registration Documents.
- (f) The Preferred Proponent as defined in ITP 1.15, must incorporate a project company in Bermuda that will own the project assets.
- (g) The Proponent may name a Subcontractor who may be the same or different as named during RFQ stage. No Proponent can be a Subcontractor to or for another Proponent or Consortium, while submitting a Proposal individually or as a Partner of a Consortium in the same Procurement Process. A Subcontractor in any Proposal may participate in more than one Proposal, but only in that capacity. The Proponent may identify more than one (1) Subcontractor.
- (h) The Proponent must comply with a local labour content requirement of at least forty five percent (45 percent) during the design and construction stage, and must engage a local Bermudian firm for the operation and maintenance phase. Proponents must provide a local labour content declaration to that effect.
- (i) The Proponent must continue to meet the qualification criteria of the RFQ stage (Eligibility, Financial Performance, and Specific Experience). If the information presented by the Proponent in the RFQ stage has changed, the Proponent must present updated information. If the Proponent no longer meets the qualification criteria defined in the RFQ stage, the Proponent will be disqualified.
- (j) The participation of the Proponent and, if the Proponent is a Consortium, all members of the Consortium, must comply with all relevant laws of Bermuda.

#### 1.4 Contents of Proponent’s Proposal

Proposals must include the documents set out in the table below. Each Proponent represents and warrants that all information provided in its Proposal is true, accurate, complete and not misleading (including misleading by omission).

Item/Document	Document to Use	Comments
Proponent Certificate	Appendix A – Proponent Certificate Form	The Proponent or its authorized representative must sign each page of the Proponent Certificate Form
RFQ Submission, along with all supporting documents	Appendix B – Qualifications Requirements Declaration	Must meet requirements set out in this Appendix. The Proponent or its authorized representative must sign the declaration
Proposed Energy Output Price	Appendix C – Proposed Energy Output Price Form	The Proponent or its authorized representative must sign the proposed Energy Output Price Form
Local Labour Content Declaration	Appendix D – Local Labour Content Declaration (Form A)	Form A to be completed and signed by each Proponent or its authorized representative. Form B to be completed by the Selected Proponent (as defined in ITP 1.16) in at or before the date of signing the Implementation Agreement.
Bid Bond	Appendix E – Bid Bond Form	Must meet requirements set out in this Appendix. The Proponent or its authorized representative must sign the declaration.
Warrant of Compliance with Technical Specifications	Appendix F – Warrant of Compliance with Technical Specifications. (Technical Evaluation Criteria document attached separately)	Must meet requirements set out in this Appendix. The Proponent or its authorized representative must sign the declaration.
Technical Proposal	Technical Evaluation Criteria (attached separately)	Must attach a completed Technical Proposal, complying with the Technical Evaluation Criteria.
Mark-ups of Power Purchase Agreement (PPA)	Draft PPA (attached separately) <b>AND</b> Appendix G	Mark up designated sections of the document using track changes and comments. If no mark-ups, declare it in Appendix G. If a marked-up PPA

		is included as part of the proposal, also declare it in the relevant section of Appendix G
Connection Agreement (CA)*	Draft CA (attached separately) <b>AND</b> Appendix G	The Proponent or its authorized representative must sign the declaration in Appendix G. (See note in bold below)
Agreement for Lease*	Draft Agreement for Lease (attached separately) <b>AND</b> Appendix G	The Proponent or its authorized representative must sign the declaration in Appendix G (See note in bold below)
Lease*	Draft Lease (attached separately) <b>AND</b> Appendix G	The Proponent or its authorized representative must sign the declaration in Appendix G (See note in bold below)
Implementation Agreement (IA)*	Draft PPA (attached separately) <b>AND</b> Appendix G	The Proponent or its authorized representative must sign the declaration in Appendix G (See note in bold below)
Letter of Credit*	Draft Letter of Credit (attached separately) <b>AND</b> Appendix G	The Proponent or its authorized representative must sign the declaration in Appendix G (See note in bold below)
Certificate of Confirmation of Non-Collusion and Conflict of Interest	Appendix H - Certificate of Confirmation of Non-Collusion	Authorized representatives of all Partners including Subcontractors must sign the form

*\* These legal agreements have been adapted to this project and the Bermudian context. In their draft forms, these agreements have been approved by Government and BELCO and are not, therefore, freely negotiable. However, Proponents are permitted to submit requests for clarification and requests for amendments, prior to Bid Submission Date where a term of an agreement raises substantial commercial issues which are required to be addressed. Proponents shall not mark-up these documents as part of the Proposal submission.*

### 1.5 Timeline for the Procurement Process – Key Dates

The timeline for the Procurement Process is as follows (all dates in US format):

Activity	Date	Time
RFP issued to Proponents, and ITP published on the Government's Procurement Website	12/02/2016	

Bidders' Conference	12/12/2015 to 12/13/2016	7:30 AM–4:30 PM (AST) 8:30 AM–12 PM (AST)
Deadline for 3 <sup>rd</sup> Set of Written Clarifications and Questions from Proponents	02/17/2017	3 PM (AST)
Deadline for Proposal Submission	03/17/2017	5 PM (AST)
Evaluation of Proposals completed	04/28/2017 (estimated)	
Conclude Negotiations	06/09/2017 (estimated)	
Cabinet Approval Process	Week of 06/26/2017 (estimated)	

The Government may change the timeline for the Procurement Process and will notify Proponents promptly of any change by email.

Should any of the above dates fall on a public holiday in Bermuda, the deadline shall be extended to the same time on the next Business Day. The submission of the Proposals will be at the address specified in 1.21. A Notice to Proponents will be sent to Proponents identifying the location and details of the Bidders' Conference.

#### **1.6 Issuance of the RFP**

The Government will issue the RFP package to the Proponent in electronic format via a secure data room.

Proponents are encouraged to check the data room regularly.

#### **1.7 Changes and Clarifications to the Bidding Procedure**

The Government reserves the right, in its sole discretion, to revise, modify, supplement or otherwise amend the RFP package and/or the RFP Process. Such changes or clarifications, if any, will be made through Notices to Proponents or Addenda, on the online data room "Announcements" folder in the secure data room and an email. Additionally, direct changes to the RFP documents can be made in the documents' folder, labelled with the date. The Government may, at its sole discretion, extend the Deadline for Proposal Submission, or any other deadline shown above.

Responses to questions regarding the RFP asked by Proponents, will be provided in the Q&A folder in the data room. This will be done without disclosing the name of the Proponent asking the question(s).

If a Proponent finds discrepancies or omissions in the Bidding Procedure, or is unclear on the meaning of any part of the Bidding Procedure, the Proponent shall give notice in writing via email requesting clarification to the Government at the address set out in ITP 1.21 by the Deadline for Written Clarifications and Questions. The Government will issue Notices to Proponents regarding any clarifications the Government makes.

In submitting Proposals, Proponents will be deemed to have acknowledged and accepted the Bidding Procedure, as amended and clarified by all Notices to Proponents.

#### **1.8 No Deviations from RFP Requirements**

Proposed deviations or exceptions made in a Proposal will cause the Proposal to be considered as non-compliant with the RFP, which will result in the rejection of the

Proposal. Nothing contained in this section shall be deemed to impair the rights reserved by the Government.

### **1.9 Notices to Proponents**

Any comment or request of a Proponent that has been accepted or acted upon by the Government shall be contained either in a (a) Notice to Proponents (b) Issuance of an Addenda (c) revision to any relevant RFP document. The Government shall not be responsible for any communications to a Proponent except when such communication is issued as part of this RFP or as a Notice to Proponents.

### **1.10 Proposal Validity Period**

A Proposal must be valid for a period of not less than three hundred and sixty-five (365) calendar days from the Deadline for Proposal Submissions (“Proposal Validity Period”). The Government may request an extension of the Proposal Validity Period applicable to Proponents’ Proposals.

### **1.11 Bid Bond**

- i. The Proponent is required to furnish at its own cost, as part of the Proposal submission, a Bid Bond to the Government in the amount \$50,000 USD.
- ii. The Bid Bond is to be sealed in a separate envelop within the main sealed bid.
- iii. The Bid Bond is to protect the Government against risk of a Proponent’s conduct, which could warrant the security’s forfeiture.
- iv. The Bid Bond shall be in denominated in USD and shall be in the form of a bank guarantee, issued by reputable bank, and in the form provided in Appendix E.
- v. Any Proposal not secured in accordance with clauses 1.11 i and 1.11 iv above will be rejected by the Government as non-responsive.
- vi. An unsuccessful Proponent’s Bid Bond will be discharged or returned once the Project is awarded pursuant to ITP 1.16 or three hundred and sixty-five days (365) after the Deadline for Proposal Submission whichever is earlier.
- vii. The Selected Proponent’s (as defined in ITP 1.17) Bid Bond will be discharged or returned pursuant to ITP 1.16.
- viii. The Bid Bond may be forfeited:
  - a. If a Proponent withdraws its offer during the Proposal Validity Period specified in ITP 1.10, or refuses to accept the correction of errors or misrepresentations in its Proposal.
  - b. In the case of the Selected Proponent, if the Proponent fails to abide by its bid.

### **1.12 Submission of Proposals**

Proposals must be received by the Government on or before the Deadline for Proposal Submissions at the Government’s Office. Proponents must submit their Proposal by hand to the address in ITP 1.21. A receipt will be given for all Proposals submitted.

The Proponent must provide two (2) hard copies, and one soft copy on a USB drive, in a sealed and clearly marked envelope. Submission by email will not be accepted.

### **1.13 Modification and Withdrawal of Proposals**

No modifications or withdrawals of Proposals will be permitted after the Deadline for Proposal Submissions. The Proponent may withdraw its Proposal after submission, provided that written notice of the withdrawal is received by the Government prior to

the Deadline for Proposal Submission. No Proposal may be withdrawn in the interval between the Deadline for Proposal Submission and the expiration of the Proposal Validity Period.

#### **1.14 Amendment of Proposal Documents**

No later than two (2) weeks prior to the deadline for Proposal Submissions, the Government may, for any reason, whether at its own initiative or in response to a clarification requested by a prospective Proponent, amend the RFP documents. All Proponents that have received the RFP documents will be notified in writing (via email) of any amendments. In order to afford Proponent reasonable time in which to take the amendment into account in preparing their offers the Government may, at its discretions extend the Deadline for Proposal Submission.

If any information in a Proponent's Proposal becomes no longer true, accurate, complete, or becomes misleading (including by omission) after the Proposal has been submitted before the Deadline for Proposal Submission, the Proponent must give written notice to the Government of the details of that event, and must include any information required to correct the default.

#### **1.15 Selection and Evaluation Process**

The selection process ("Selection Process") to be used by the Government will involve the following steps:

- i. Preliminary Examination:
  - a. Prior to the detailed evaluation, the Government will examine the Proposals to determine whether they are complete; have any computational errors, are properly signed, and in general good order.
  - b. Proposals determined as not substantially responsive will be rejected by the Government, and may not subsequently made responsive by the Proponent by correction of non-conformity.
- ii. Evaluate technical requirements (adequacy of bid bond, technical qualification criteria, local content, energy output price, and marked up PPA, other forms).
- iii. Evaluate and rank compliant Proposals based on lowest energy output price.
- iv. Invite the preferred proponent ("Preferred Proponent"), defined as the one with a compliant Proposal and the lowest proposed energy output rate, to negotiate project agreements.

##### **1.15.1 Step 1: Check that Proposals are compliant**

The Government will check that the Proposal includes all forms and documents listed in ITP 1.4, do not have any computational errors and are properly signed. All forms must be completed and compliant.

Only Proposals that meet the terms of Step 1 will be considered for Step 2.

##### **1.15.2 Step 2: Evaluate technical requirements**

The Government will check that:

- i. The Proponent meets or continues to meet the three qualification requirements assessed at the RFQ stage (Eligibility, Financial Performance, and Specific Experience).

- a. If the information provided by the Proponent in the RFQ stage in relation to each requirement is still current, then the Proponent must declare this using Appendix B: Qualification Requirements Declaration.
- b. If the information provided in relation to one or more requirements has changed, the Proponent must submit updated information, clearly highlighting the changes compared to the previous submission using mark ups.
- ii. The Proposal includes the Local Labour Content Declaration, in which the Proponent warrants to comply with the minimal local content requirements.
- iii. The Proposal complies with the technical evaluation criteria.
- iv. The Proposal includes a signed Warrant of Compliance with Technical Specifications.
- v. The Proposal includes mark-ups of sections of the PPA deemed negotiable, and includes a declaration that a marked-up version of the PPA was needed or not needed.
- vi. The Proposal includes a declaration that the Proponent is satisfied with the provisions in the draft Lease, draft Agreement for Lease, draft Connection Agreement, draft Letter of Credit, and draft Implementation Agreement included in the RFP.

Only Proposals that meet the terms of Step 2 will be considered for Step 3.

### **1.15.3 Step 3: Evaluate compliant Proposals**

The Government will evaluate complying Proposals based on the following:

- i. The Government will assess all Proposals and will rank them from lowest proposed energy output price ( $R_0$ ) to highest proposed energy output price.
- ii. The Proponent who presents the lowest proposed  $R_0$  will be ranked first. This will be the Preferred Proponent.
- iii. Should the above process result in a tie for the lowest proposed  $R_0$ , the Government shall immediately conduct an auction between the Proponents submitting the lowest  $R_0$  to resolve the situation. The Proponents who submitted the lowest proposed  $R_0$  will receive written notice if a tie occurs. In the auction, each of those Proponents shall submit their Best and Final Offer (BAFO). This process shall be repeated until the tie is broken and a Preferred Proponent is defined. Each Proponent must ensure that it has an authorized representative who has authority to bind the Proponent in case of an auction. This tie-breaking mechanism will apply throughout Step 3 whenever a tie between two or more Proponents occurs.
- iv. The Preferred Proponent will be invited by the Government and BELCO to negotiate the Project Agreements (“Invitation to Negotiate”).
- v. If negotiations between the Preferred Proponent and the Government and BELCO are successful, the contract will be awarded.
- vi. If negotiations are unsuccessful, the Government will start negotiations with the Proponent that was ranked second (the “Second Ranking Proponent”).

- vii. This Proponent will then become the Preferred Proponent. This procedure will continue until the Procuring Party negotiates and awards the contract to a Proponent.

#### **1.16 Finalization Period**

- i. From the date the Government notifies the Preferred Proponent, the Government, BELCO, and the Preferred Proponent will move to finalize and execute the Project Agreements.
- ii. When the Project Agreements have been executed (the “Final Project Agreements”), the Government will send the Preferred Proponent the notice of award (“Notice of Award”), and serve the other Proponents a notice signifying tender closure (“Notice of Tender Closure”). Once the Preferred Proponent accepts the Notice of Award, it becomes the Selected Proponent (“Selected Proponent”).
- iii. If:
  - a. the Government, BELCO, and the Preferred Proponent cannot reach agreement and execute the Project Agreements within one hundred and twenty-two (122) days from receipt by the Preferred Proponent of the Invitation to Negotiate; or
  - b. the Government and BELCO together consider, in their discretion, that there is no reasonable prospect of executing the Project Agreements with the Preferred Proponent,
  - c. then the Government may serve written notice to the Preferred Proponent declaring the Preferred Proponent to no longer be the Preferred Proponent. In that case, the Government shall serve on the Proponent whose Proposal is ranked second to the Preferred Proponent (the “Second Ranking Proponent”), a notice that they are now the first Preferred Proponent.
- iv. The Second Ranking Proponent shall, on and from the date of receipt of the notice that they are now the first Preferred Proponent pursuant to the subsection iii above, assume the status of the Preferred Proponent under the Procurement Process and the Proponent whose Proposal ranked as the third highest bid shall assume the status of Second Ranking Proponent and so forth.
- v. For clarity, in case of a tie for the Second Ranking Proponent in connection with serving a new Notice of being the first Preferred Proponent pursuant to subsection iii above, the Government shall immediately call an auction to determine which of the Proponents shall be the Second Ranking Proponent, using the same process as set out in ITP 1.15.

#### **1.17 Performance Bond**

The “Selected Proponent,” that is the Proponent to whom the Government has sent the Notice of Award, will have to submit a Performance Bond within fourteen (14) Business Days of the Notice of Award. Upon the Selected Proponent’s submission of the Performance Bond, the Government will release the Bid Bond to the Selected Proponent.

#### **1.18 Failure of the Procurement Process**

For clarity, the Procurement Process will be declared to have failed if no Proposal complies with all steps of the Selection Process for Proposals.

### **1.19 Information Confidentiality**

No representative or employee of the Government, its advisors and consultants, or any entity involved in the preparation of this Project shall directly or indirectly give, nor shall any Proponent (including Subcontractors) be entitled to, any information about other Proponents, other than what is contained in the RFP, any Notices to Proponents, and in any official announcement of the results of the Procurement Process.

A Proponent Representative who has been engaged in a professional advisory capacity by two Proponents (a “Professional Affiliate”), or a Subcontractor to the extent that it has teamed up with more than one Proponent must sign a confidentiality agreement with each Proponent it has team up with.

### **1.20 Disqualification**

Factors that may be grounds for disqualification of a Proponent are:

- Evidence of collusion.
- Any attempt to influence the Government or BELCO.
- Evidence of incorrect information submitted as part of the Proposal.
- Evidence of non-compliance with conditions required in this ITP Sections 1 and 2.
- Evidence of any pending lawsuits, unresolved contractual claims or disputes between the Proponent and a third party that could affect the Project.

### **1.21 Communications Protocol**

All notices to and communications with the Government in connection with the Procurement Process shall be sent either in writing or by email to the following addresses:

#### **Postal address for Proposal submission**

Ministry of Economic Development  
3rd Floor Government Administration Building  
30 Parliament Street  
Hamilton HM12  
Bermuda

Tel. +1 (441) 296 1574

#### **Email address for clarification questions**

[airportsolarproject@gov.bm](mailto:airportsolarproject@gov.bm)

#### **The Government’s Authorized Representative for the RFP Process**

Jeane Nikolai, Director of Energy

No clarification questions shall be sent to the postal address, and no Proposals shall be sent to the email address.

Proponents shall include with their Proposals the designation and email address of their representative to whom notices or other communications shall be sent.

The email subject shall include the project name to which it relates.

### **1.21.1 Rules of Contact**

- i. Unless specifically authorized elsewhere in this ITP, the Government Representative shall be the Government's single contact person and source of information for the procurement of the Project.
- ii. All notices, submissions, approvals and other communications described in this ITP, whether by a Proponent or the Government, shall be in writing and delivered by e-mail, except in the cases of notices, submissions, approvals or other communications expressly permitted or required to be given verbally, by telephone or hard copy or by submission through the Government's website. Unless expressly requested or permitted otherwise or initiated by the Government, the Government will not directly engage in communication regarding the procurement of the project, the RFP and RFP process with any person other than the Proponents invited to submit a Proposal.
- iii. The rules of contact set forth in this Section shall apply during the entire RFP Process and to all forms of contact, including, without limitation, face-to-face meetings and teleconferences between the Government and any Proponent (which meetings and teleconferences may include any of such Proponent's employees, consultants and advisors), e-mail or formal written communication and submissions through the Government's website.
- iv. The following rules of contact shall apply to any contact by and among a Proponent and any other Proponent(s) or a Proponent and the Government:
  - a. Proponents are expected to conduct themselves with professional integrity and to refrain from lobbying activities. Commencing with the issuance of the RFP and continuing until the procurement process is completed, no employee, member, agent, or advisor of any potential or submitting Proponent shall have any direct or indirect ex parte communications regarding this Project with any representative of the Administration, or other Proponents or consultants involved with the procurement, except for communications expressly permitted by the RFP.
  - b. Any verified allegation that a Proponent, Proponent member, an employee, agent, adviser, or consultant of the Proponent has engaged in such prohibited communications or attempted to unduly influence the selection process may be cause for the Government to disqualify the Proponent or to disqualify the Proponent member from participating with the Proponent, all at the sole discretion of the Government.

### **1.21.2 Communications with Stakeholders and Property Owners (the Government)**

Depending on the nature and volume of questions received regarding Stakeholders issues, the Government may schedule meetings between Proponent and Stakeholders. Any such meeting will be open to all Proponents and the relevant Stakeholder(s). If the Government determines to schedule any such meeting, it will notify the Proponents of the Stakeholder attendees, topic(s) to be covered, date, time and other pertinent information regarding the meeting.

## 2 General Provisions

### 2.1 Definitions

In the Bidding Procedure, unless the context otherwise requires, the following terms shall have the following meanings:

Defined Term	Meaning
“BELCO”	Bermuda Electric Lighting Company
“Bid Bond”	The bond required to be provided by a Proponent with their Proposal. The Bid Bond shall be of a total amount of US\$50,000 (fifty thousand United States Dollars), and is defined in ITP 1.11.
“Bidding Procedure”	ITP 1 of the Instructions to Proponents, which sets out how the Government will run the Procurement Process and the procedure that Proponents must follow in participating in the Procurement Process.
“Business Day”	Any day other than a Saturday, Sunday, a public holiday in Bermuda, or a day on which banks in Bermuda are authorized by law to be closed.
“Business Hours”	Any time between 9:00 a.m. to 5:00 p.m. of a Business Day.
“CA”	Connection Agreement between the IPP and BELCO outlining the terms and conditions for connecting the solar facility to Naval Air Station Substation, determined as the interconnection point.
“Consortium”	A Proponent who, rather than being one person, is a group of individuals, companies, firms, bodies corporate or other entities who intend to participate through joint effort in the Procurement Process.
“Deadline for Written Clarifications and Questions”	The deadline before which all written clarifications must be submitted in accordance with ITP 1.5.
“Deadline for Proposal Submission”	The deadline before which Proposals must be submitted, as set out in the timeline for the Procurement Process in ITP 1.5.
“Final Project Agreements”	The final executed version of the Project Agreements agreed between the Government, BELCO and the Selected Proponent.
“IA”	Implementation Agreement
“Invitation to Negotiate”	Has the meaning given to that term in ITP 1.15.
“ITP”	Instructions to Proponents
“IPP”	Independent Power Producer
“Notice of Award”	A notice given to the Preferred Proponent pursuant to ITP 1.17 signifying the designation of a Preferred Proponent.
“Notice of Tender Closure”	A notice given to the Preferred Proponent and circulated to the other Proponents pursuant to ITP 1.18 signifying the execution of the Project Agreements and the end of the Procurement Process.
“Notice(s) to Proponents”	Shall mean amendments, supplements or clarifications to the Bidding Procedure or the RFP that will be in writing and numbered sequentially as the Government may issue from time to time. Any Notice to Proponents, once issued, form part of the RFP.
“PPA”	Power Purchase Agreement
“Performance Bond”	The performance bond required to be provided by the Selected Proponent pursuant to the PPA.
“Preferred Proponent”	Shall have the meaning given in ITP 1.15.
“Procurement Process”	The process through which the Selected Proponent for the Project shall be identified, as outlined in the Bidding Procedure.
“Project Agreements”	The PPA, CA, IA, Lease, and Agreement for Lease.
“Proponent”	An entity, or a Consortium, to whom the Government issues the RFP.
“Proponent Representative”	A member, director, employee, officer, advisor or other legally authorized representative of a Proponent.
“Proponent Requirements”	The Proponent requirements set out in ITP 1.3.
“Proposed R <sub>0</sub> ”	The per kWh price offered by the Proponent in its Proposal, provided in the form attached to this RFP in Appendix C.
“Professional Affiliate”	Has the meaning given to that term in ITP 1.19
“Project”	The Project to design, finance, build, own, operate, and maintain a 6MW <sub>AC</sub> solar PV generation facility in Bermuda.
“Proposal”	A proposal submitted by a Proponent pursuant to the RFP invitation.

“Proposal Validity Period”	The period for which Proposals must be valid, as set out in ITP 1.10.
“Representative”	The Consortium member who has been nominated by the Consortium authority to conduct all business for and on behalf of any and all the partners of the Consortium during the bidding process and, in the event the Consortium is awarded the Contract, during contract execution.
“RFP”	This Request for Proposals, as further defined in the Introduction to these Instructions to Proponents.
“RFQ”	The request for qualifications that was issued to identify qualified Proponents for the RFP.
“Second Ranking Proponent”	Shall have the meaning given in ITP 1.15.
“Selection Process”	The selection process set out in ITP 1.15, and any other selection criteria set out in this RFP.
“Selected Proponent”	Shall have the meaning given in ITP 1.15.

## 2.2 Interpretation

Unless the context otherwise requires:

- i. Words singular and plural in number shall be deemed to include the other.
- ii. Words referred to as “he”, shall be deemed to include the male, female and neutral (e.g. his/hers/its), and vice-versa.
- iii. The terms “include” and “including” shall be construed as being all times followed by the words “without limitation” unless the context specifically indicates otherwise.
- iv. Whenever a Proponent is required to form an opinion, make a determination or designation, give a notice of approval or consent, incur costs or expenses, request any item or action, exercise a discretion or perform an act under the RFP, it must be done reasonably under the circumstances in accordance with the terms of the RFP, and must not be done or refused capriciously or arbitrarily or unduly delayed.
- v. References to the RFP shall include the RFP and each Notice to Proponents, and the respective provision, terms and conditions thereof, and any amendment, supplement or modification thereto.
- vi. Article and Section headings are for convenience of reference only and shall not be deemed to limit or otherwise affect any of the provisions hereof.
- vii. Unless expressly provided, any reference to a “day” shall refer to a calendar day.

## 2.3 General Conditions

- i. Neither the Government nor its employees, agents, representatives or advisors assumes any responsibility for interpretations or conclusions drawn by a Proponent from, or the accuracy or completeness of, data furnished by the Government or any of its employees, agents, representatives or advisors.
- ii. The Government shall not be held liable for any risks, taxes, costs, fees and expenses incurred, directly or indirectly, by a Proponent in the preparation of their Proposal, inclusive of their due diligence effort and the fees and disbursements of their advisors, if any.
- iii. Neither the Government nor any of its employees, agents, representatives or advisors may be held liable in the event that a court of competent jurisdiction or other governmental authority declares the Procurement Process, selection and/or award invalid or sets it aside, for any reason whatsoever at any future date.

- iv. The Government requesting and/or receiving Proposals or any other information or document will not constitute an invitation or commitment by the Government to enter into any agreement with a Proponent.
- v. The Government reserves the right in its sole and absolute discretion to: (i) accept or reject any or all Proposals or any part thereof; (ii) withdraw from the Procurement Process (including as a result of a force majeure event) or modify, supplement or change any of the terms of the Procurement Process at any time without giving any reason therefore; (iii) waive any defect contained in the Procurement Process or a Proposal; and (iv) exercise any other remedy granted by Bermudian Law or the RFP. Neither the Government nor any of its employees, officers, members or advisors shall be held liable for the Government doing any action set out in this clause.
- vi. The circumstances in which the Government may reject a Proposal include where:
  - a. the Proponent makes a misrepresentation in any of the documents submitted to the Government or any supporting documentation or otherwise, whether written or oral, including the statement of nationality;
  - b. the Proponent fails to promptly comply with reasonable requests of the Government for further information or clarification in relation to the Proponent's Proposal;
  - c. a supervisor, receiver, administrator or liquidator or other encumbrance takes possession of or is appointed over or any distress, execution or other process is levied or enforced (and not discharged within 21 days) upon the whole or any substantial part of the assets of the Proponent (or if the Proponent is a Consortium, any member of that Consortium);
  - d. a court petition is presented or a meeting is convened for the purpose of considering the winding up, bankruptcy or dissolution of the Proponent (or if the Proponent is a Consortium, any member of that Consortium), or circumstances come into existence that would permit such a court petition to be presented.
- vii. Proposals that have been prepared by a partnership, corporation or Consortium shall be signed in the name of the Consortium by an authorized Partner, officer or Representative, as the case may be, followed by the name, signature, and designation of the person authorized to sign the Proposal.
- viii. Notwithstanding ITP 1.3, a Proposal by a person who affixes to their signature the word "President", "Secretary", "Agent", "Representative" and other designations without disclosing their principal shall be held personally liable for the Proposal. The person signing on behalf of a partnership, corporation, or consortium shall furnish the Government satisfactory proof of such authority from the partnership, corporation, or consortium; otherwise, the person whose signature appears on the Proposal shall be considered the Proponent.
- ix. In the Proposal, prices shall be expressed in written words and figures expressed in United States Dollars (US\$). In case of discrepancies between prices in words and figures, the prices in words shall prevail.
- x. In computing a period, the first day shall be excluded and the last day included.

#### **2.4 Warranty against Improper Payments**

Each of the Proponents warrants that neither it nor anyone on its behalf has offered or paid, directly or indirectly, any official or employee or any member of the Government or any Bermudian governmental entity any consideration or commission in connection with the Procurement Process or the Project, nor have they or anyone on their behalf exerted or utilized any corrupt or unlawful influence to secure or solicit the Procurement Process or the Project for any consideration or commission. Any violation of this warranty shall constitute sufficient grounds for the disqualification of the Proponent from any further participation in the Procurement Process, without prejudice to the filing of civil and/or criminal action under Bermudian Law against the Proponent and/or its representatives and the officials/employees involved.

#### **2.5 Warranty against Conflict of Interest**

Each of the Proponents warrants that neither it nor anyone on its behalf involved in the Procurement Process was previously employed or worked with any entity involved in the preparation and implementation of the Project and shall disclose in writing detailed information regarding any existing, potential, possible or future conflict of interest that they may have in connection with the Project, the Government, or its advisors, unless protected by a Firewall Agreement that has already been approved by Government.

#### **2.6 Language**

English shall be the official language to be used in the Procurement Process and the Project, including in: Proposals, reports, communications, and correspondence between the parties, as well as all orders, procedures, work instructions, and safety notices.

#### **2.7 Governing Law**

The RFP shall be governed by and construed in accordance with the laws of Bermuda.

#### **2.8 Non-Waiver of Rights**

The Government's failure to exercise, or delay in exercising, any of its rights under the RFP shall not be construed as a waiver of those rights, nor shall the Government's single or partial exercise of any right preclude any other or further exercise thereof, or the exercise of any other right. The rights and remedies provided in the RFP are in addition to any right or remedies provided under Bermudian Law.

#### **2.9 Indemnity**

Each Proponent indemnifies the Government and holds the Government harmless against any and all losses, claims, liabilities, damages, costs and expenses arising out of or in connection with its conduct, participation in the Procurement Process, and its Proposal.

#### **2.10 Limitation of Liability**

The Government shall not be liable to any Proponent or any third party in contract, tort or otherwise for any loss or damage sustained in connection with the Procurement Process including without limitation any claims for loss of use, loss of income or consequential damages, except as provided for in the Final Project Agreements executed by the Government and the relevant Proponent.

#### **2.11 Taxes, Customs, Duties, Costs and Charges**

The Selected Proponent shall (i) pay any and all costs, expenses, fees, applicable duties, and taxes, including all documentary stamp taxes payable in connection with the execution of the Final Project Agreements; and (ii) pay all costs, expenses, fees and taxes

related to and arising from its exercise or performance of its obligations under the Procurement Process.

## **2.12 Disclosure of Information**

All documents received by the Government in connection with the procurement of the Project are subject to Public Access to Information Act 2010, and are subject to release unless a statutory exception exists that exempts the documents from public release. Notwithstanding the foregoing, the Government has taken measures to protect the confidentiality of all RFQ Submissions to date, and will do the same for the remainder of submissions during the RFP Process.

Every person involved in the RFP Process, acting on behalf of the Government, shall sign a confidentiality and nondisclosure agreement. However, under no circumstances will the Government be responsible or liable to a Proponent or any other party as a result of disclosing any materials, whether the disclosure is deemed required by law, by an order of court, or occurs through inadvertence, mistake, or negligence on the part of the Government or its respective officers, employees, contractors, or consultants.

## **2.13 Prefeasibility Assessment and Reference Folder Documents**

- i. Studies and investigations undertaken by the Government in connection with the Project are contained in the Prefeasibility Assessment Documents. These documents will be made available to Proponents, as and when such documents become available. To the extent the Government undertakes any additional investigative activities; the information obtained by the Government from such activities also may be made available to Proponents.
- ii. The Prefeasibility Assessment and Reference Folder Documents will not form part of the Project Agreements. The Government makes no representation, warranty or guarantee as to, and shall not be responsible for, the accuracy, completeness, or pertinence of these Documents, and, in addition, shall not be responsible for any conclusions drawn therefrom by any Person.

## **2.14 Warranty on Compliance with Bermudian Law**

Each of the Proponents represents and warrants that from the date the Proponent receives the RFP, it shall at all times comply with the Laws of Bermuda. Any violation of this warranty shall constitute a sufficient ground for the disqualification of the Proponent from any further participation in the Procurement Process, without prejudice to the filing of civil and/or criminal action under the Laws of Bermuda against the Proponent and its representatives.

### 3 Appendices

#### Appendix A. Proponent Certificate Form

(To be submitted on the stationery/letterhead of the Proponent)

[Date]

Attention: Jeane Nikolai  
Ministry of Economic Development  
3rd Floor Government Administration Building  
30 Parliament Street  
Hamilton HM12  
Bermuda

Tel. +1 (441) 296 1574

Subject: Development of a 6MW<sub>AC</sub> Solar PV Facility at the Finger Point

Sir/Madam:

We refer to the Request for Proposals (the “RFP”) dated [insert date], for the Bermuda 6MW<sub>AC</sub> Solar PV Project.

Defined terms have the meanings given to them in the RFP dated [insert date].

- (a) [Proponent’s Name] (“Proponent”) is [a corporation/partnership] duly existing under the laws of [insert], with an office address at [address] or a consortium composed of the following corporations, partnerships, individuals duly existing under the laws of [insert]: (list names of corporations/partnerships/individuals and addresses);
- (b) The Proponent will enter into [a] subcontract[s] with the following [corporation[s]/individual[s]] duly existing under the laws of [insert], with an office address at [address];
- (c) Each of the documents submitted by the Proponent in satisfaction of the RFP is an original copy or a true and faithful reproduction or copy of the original;
- (d) The Proponent has carefully examined the RFP and accepts all the terms and conditions thereof;
- (e) The Proponent is fully informed and understands all conditions and matters affecting or that could affect the Proposal or the Proponent’s participation in the Procurement Process;
- (f) The Proponent has conducted an independent due diligence investigation of all matters related to the Procurement Process and the Project;
- (g) The Proponent has secured, carefully examined and accepts the terms and conditions of all Notices to Proponents;

- (h) The Proponent acknowledges and represents that its Proposal constitutes a voluntary offer to undertake the Project, on the basis and terms set forth in the Project Agreements (but referring to the marked-up Project Agreements it submits as part of its Proposal);
- (i) The Proponent's Proposal constitutes an unconditional and irrevocable offer, which shall be valid, and may be accepted by the Government within three hundred and sixty-five (365) days from the Deadline for Proposal Submissions irrespective of any event that may occur within such period or as may be extended by the Government, as provided in the RFP;
- (j) The Proponent unconditionally and irrevocably waives any and all claims and causes of action against the Government in the event that the Procurement Process is (i) amended or terminated by the Government; or (ii) declared invalid or is set aside by a court or competent jurisdiction or any Governmental Body for any reason whatsoever; and
- (k) The Proponent unconditionally and irrevocably waives any defect, deviation, fault or infirmity in the Procurement Process conducted by the Government up to and including the date hereof.
- (l) The Proponent and all its Representatives have at all times complied with the requirements in ITP 1.21 of the RFP during the Procurement Process, including that the Proponent and none of its Representatives (including any other Professional Affiliate) have had any contact or made any communication with any other Proponent or any other Proponent's Representative under the Procurement Process.
- (m) The Proponent and all its Representatives (including other Professional Affiliates) will continue to comply with the requirements of ITP 1.19 of the RFP for the remainder of the Procurement Process until the Proponent receives a Notice of Transaction Close from the Government.
- (n) Proponent has disclosed to the Government any Professional Affiliate it has or has had during the Procurement Process and will disclose to the Government any Professional Affiliate that Proponent has after this date but before receiving a Notice of Tender Closure from the Government.

This certification is being issued in connection with the RFP and for whatever legal purpose this may serve.

[PROPONENT'S NAME]

[authorized signature]  
[name]

Acknowledgement  
(before a Notary Public authorized to administer oaths)

## **Appendix B. Qualification Requirements Declaration**

Proponent must declare that information submitted in RFQ stage (Eligibility, Financial Performance, and Specific Experience) still holds. Otherwise, the Proponent must submit revised or additional information in tracked changes mode to their original RFQ submission.

Note that while Subcontractors may be added to Proponent's team the original Consortium Partners from the RFQ submission must remain the same.

## Appendix C. Proposed Energy Output Price

The Energy Output Price ( $R_0$ ) is defined in Schedule 1 (Section 1.1) in the Power Purchase Agreement in the Request for Proposal (RFP).

The Proponent must declare its proposed  $R_0$  below, quoted in United States Cents, in words and figures:

Proposed  $R_0$ : ..... US Cents/kWh.

.....  
.....United States Cents per  
kilowatt hour.

## Appendix D. Local Labour Content Requirements

This appendix contains the Local Labour Content Declaration, Form A, that must be submitted with the Proposal (D.2). A Guideline explaining how the Proponent will calculate Local Labour Content (LLC) is provided in D.4. Form B is in an Excel file attached to this RFP.

### D.1 Overview of Requirements

The Proponent must submit the Local Labour Content Declaration (Form A) with their Proposal. Form B should be completed and delivered by the Selected Proponent once contract negotiations have concluded. Table 3.1 shows how to meet the LLC requirements.

**Table 3.1: Overview of Requirements**

Document	Description	Submission due
Form A (LLC Declaration)	A Declaration to be filled out by each Proponent that commits the Proponent to meeting the LLC stipulated in ITP 1.3.	Due at Deadline for Proposal Submission.
Form B (Schedule to Form A)	A Form to be filled out by the Selected Proponent that details the type and sources of labour and services being procured for the Project's design and construction phase (sections A to C), and for the operations and maintenance phase (section D).	Due by the date of signing the Implementation Agreement.

### What is the local labour content?

Local Labour Content is defined as:

The percentage of labour costs during the design and construction phase of the Project that are considered to originate in substance from within Bermuda. The LLC is the value of local labour used during construction as a percentage of total labour used, calculated with the following formula:

$$LLC = (\beta/\lambda) * 100$$

Where:

$\beta$  = value of local labour procured, expressed in USD

$\lambda$  = total cost of labour excluding value added tax (VAT), expressed in USD

The Proponent must differentiate between imported labour costs and local Bermudian labour costs to calculate the local labour content during the design and construction phase of the Project.

The Proponent must also commit to employing a local Bermudian company to carry out operation and maintenance of the Facility.

Bermudian in the case of a company is defined as a company incorporated in Bermuda which is majority Bermudian owned and has as such not required a section 114 (B) License under the Companies Act. Bermudian in the case of an individual is defined as a person who does not need a work permit to live and work in Bermuda.

**D.2 Form A**

**Local Labour Content Declaration**

Project: Development of 6MW<sub>AC</sub> Solar PV Facility at the Finger  
Issued by: Government of Bermuda

I, the undersigned, .....*[name of authorized representative]*,  
do hereby declare, in my capacity as..... of  
.....*[name of Proponent]*, the following:

- a) The facts contained herein are within my own personal knowledge.
- b) The project to be delivered in terms of the above-specified Project will comply with the minimum local labour content requirement of 45% during design and construction, and to engage a local company for operation and maintenance of the facility.
- c) If selected for negotiations, shall follow, in all material respects, the information to be provided in Form B upon concluding negotiations.
- d) The local content will be calculated using the formula, the rates of exchange, and the values indicated in Form B.

.....  
*Signature(s) of authorized representative(s) of the Proponent.*

### **D.3 Description of Labour Categories**

This section describes the LLC categories used in Form B.

#### **D.3.1 Calculating LLC for Design and Construction Phase**

Identify the costs of labour imported from overseas, if any, by the cost for each type of services. In the case of labour sourced from a Bermudian agent, supplier, or subcontractor (i.e. a third party who can be an individual or a company), obtain that information and declaration from the third party. If information on the origin of labour is not available, it will be deemed to be imported labour.

The **rate of exchange** to be used in this tender to calculate the local content must be the rate(s) published by the Bermuda Monetary Authority for the specific currency on December 14, 2016.

##### **Imported directly by the Proponent**

When the Proponent imports labour directly, the responsibility is on the Proponent to provide evidence of what services were procured and their cost. The evidence should be verifiable and pertain to the design and construction of the facility as a whole. Evidence will include commercial invoices, and bills of entry. This requirement covers imported services such as project management, design, testing, and so on.

##### **Imported by a third party and supplied to the Proponent**

When the Proponent employs services through persons imported by any third party (for example, a domestic agent, supplier or subcontractor in the supply chain), the responsibility is on the Proponent to obtain verifiable evidence from the third party.

When a third party procures imported services such as project management, design, and testing, such payments relating to the Project must be included when calculating imported services.

##### **Local Content**

Identify and calculate the local labour content, by value, to be used in the design and construction of the Project.

#### **D.3.2 Showing Local Labour for Operation and Maintenance Phase**

The Selected Proponent must declare the name of the local Bermudian company it has hired to provide O&M services to carry out the Project after commercial operation date, including the company's date of incorporation in Bermuda. This must include a detailed scope of work or heads of terms of the contract, as well as the estimated value of the services.

## **D.4 Step by Step Guide for Form B**

*Note: The paragraph numbers correspond to the cell numbers in Form B.*

### **D.4.1 Local Labour Content for design and construction phase**

#### **Table A. Labour Imported Directly or through a Third Party**

##### **A1. Description of imported services**

Provide a list of the type of labour services imported by the Proponent or through a third party.

##### **A2. Name of overseas company**

Provide the name(s) of the overseas supplier(s) that will supply the imported services.

##### **A3. Foreign currency value as per commercial invoice**

Provide the foreign currency value of the labour that will be imported.

##### **A4. Rate of exchange**

Provide the exchange rate used and reference the source.

##### **A5. Local value of imported services**

Convert the value of the labour imported as per commercial invoice (A3) into the USD value by using the exchange rate (A4) disclosed in the documentation.

##### **A6. Total imported value**

Provide the total imported value for each of the services imported by multiplying the local value (A5) by the quantity of services of each type.

##### **A7. Total value of labour imported by Proponent**

The total value of imported services,  $\alpha$ , is the sum of the values in column A6.

#### **Table B. Local Labour Procured in Bermuda**

##### **B1. Description of services procured**

Provide a list of the type of services that will be procured locally in Bermuda.

##### **B2. Name of local company**

Provide the name of the local supplier for each service listed in column B1.

##### **B3. Value of services**

Provide the total value of each activity procured in column B1.

##### **B4. Total value of local labour**

Multiply the value in column B3 by the quantity of such services that were locally procured.

##### **B5. Total value of local labour**

The total value of local labour,  $\beta$ , is the sum of the values in column B4. This total must be used to calculate ' $\lambda$ '.

**B6. Total value of labour**

The total value of labour,  $\lambda$ , is the sum of the imported labour  $\alpha$  (A7), and the local labour  $\beta$  (B5).

**Local Labour Content**

The calculation of local labour content results from the formula described above:

LLC =  $(\beta/\lambda) * 100$ , where  $\beta$  is from cell B5, and  $\lambda$  is from cell B6.

**D.4.2 Local Labour Content for Operation and Maintenance****Table C. Local O&M Services****C1. Description of services procured**

Describe the type of services procured for carrying out operation and maintenance of the Project.

**C2. Name of local company**

Provide the name of the local company contracted to provide the services described in C1.

**C3. Date of incorporation in Bermuda**

Provide the date of the company's incorporation in Bermuda.

**C4. Scope of work or contract attached**

Indicate that the procurement contract, detailed scope of work, or heads of terms have been attached.

**C5. Value of services**

Indicate the value of services expected to be procured locally.

**Appendix E. Bid Bond**

[If Proponents modify this template due to bank requirements or other, Proponents are required to provide tracked changes of this template in their submission. The Government retains the sole discretion to reject any bid where the modifications made to this document are not acceptable to the Government]

Name and address of guarantor bank:

.....  
.....  
.....

Name and address of beneficiary (contracting agency):

.....  
.....  
.....

We, the undersigned..... (Guarantor), in order to enable..... (name of Proponent) to bid for the 6MW<sub>AC</sub> Solar PV Project, hereby irrevocably and independently guarantee to pay to you ..... waiving all objections and defences in relation such amounts payable to us.

We shall effect payment under this guarantee on your first written demand within the time specified in the demand, which must be accompanied by your confirmation that you have accepted the above-mentioned bid and that the firm ..... has withdrawn its offer during the bid validity period, has refused to accept the correction of errors or misrepresentations in its proposal, or is no longer prepared to abide by this bid once it was selected as the best offer. Upon such payment being made, we are released from any further obligation to pay any further amounts pursuant to this guarantee.

This guarantee shall expire no later than ..... With the effect that only claims received for payment by letter or email before this date shall be valid and payable by the Guarantor.

This guarantee is governed by the laws of Bermuda.

.....  
Date

.....  
Guarantor

## Appendix F. Warrant of Compliance with Technical Specifications

In order to meet the requirements of the Selection Process specified in the Instructions to Proponents, I, the undersigned, ..... (name of Proponent), warrant that the Proposal complies with Sections 1, 2.2, 2.3, 2.4, and 2.5 of the Technical Evaluation Criteria document included in the Request for Proposals.

I understand that if I fail to comply with the Technical Specifications then BELCO can retain and execute my Performance Bond.

.....  
*Signature(s) of Proponent or an authorized representative(s) of the Proponent*

## Appendix G. Mark-ups to Project Agreements

We, the undersigned, ..... (name of Proponent) do not propose mark-ups to the following Project Agreements:

- [Power Purchase Agreement]
- Connection Agreement
- Implementation Agreement
- Agreement for Lease
- Lease
- Letter of Credit

We propose mark-ups to the following Project Agreements.

- [Power Purchase Agreement]

A marked-up version of the Power Purchase Agreement is included in our Proposal submission.

.....

*Signature(s) of Proponent or an authorized representative(s) of the Proponent*

## Appendix H. Certificate of Confirmation of Non-Collusion

### Notes for the Proponent

The essence of competitive procurement is that the Government of Bermuda shall receive bona fide competitive Proposals from persons submitting a Proposal. In recognition of this principle, all entities submitting a Proposal will be required, by way of signature(s) from authorized representatives, to state their agreement to the statements below, which indicates that the Proposal has been submitted without any form of collusion.

The Certificate of Confirmation of Non-Collusion is a mandatory requirement from ALL Proponent partners and identified subcontractors. Any Proposals submitted which do not include a signed copy of the Certificate will be wholly rejected and will not be included in the evaluation process.

If it is later found that the undertakings made below have been breached at any stage of the process, the Proponent will be expelled from the process immediately. In the event that this is discovered after a contract award, legal action may be taken against the Proponent and/or any party involved in the matter.

False submissions may also exclude the Proponent, and any other person or company involved in collusion, from bidding for future projects tendered by the Government of Bermuda.

### Confirmation of non-collusion

We certify that this is a bona fide Proposal, intended to be competitive and that we have not fixed or adjusted the rates and prices quoted by or under or in accordance with any agreement or arrangement with any other person.

We confirm that we have not received any additional information, other than that contained within the RFP Package, additional items in the data room, or notification emails which was provided to all Proponents.

We also certify that we have not done and undertake that we will not do at any time any of the following acts:

- (a) communicate with a person other than the tendering authority the amount or approximate amount of our Proposed price bid (other than in confidence in order to obtain quotations necessary for the preparation of the price bid) or
- (b) enter into any agreement or arrangement with any other person that also be submitting a Proposal; or
- (c) offering or agreeing to pay or give or paying any sum of money, inducement, gift /hospitality or valuable consideration directly or indirectly to any person in relation to this procurement.

*Signed*

(1) \_\_\_\_\_

*Title* \_\_\_\_\_ *Date* \_\_\_\_\_

*for and on behalf of (Company)* \_\_\_\_\_

*(Mailing address)* \_\_\_\_\_  
\_\_\_\_\_

*(Email)* \_\_\_\_\_

*(Contact #'s)*            *(t)* \_\_\_\_\_    *(c)* \_\_\_\_\_

*Signed*

*(2)* \_\_\_\_\_

*Title* \_\_\_\_\_ *Date* \_\_\_\_\_

*for and on behalf of (Company)* \_\_\_\_\_

*(Mailing address)* \_\_\_\_\_  
\_\_\_\_\_

*(Email)* \_\_\_\_\_

*(Contact #'s)*            *(t)* \_\_\_\_\_    *(c)* \_\_\_\_\_

*Signed*

*(3)* \_\_\_\_\_

*Title* \_\_\_\_\_ *Date* \_\_\_\_\_

*for and on behalf of (Company)* \_\_\_\_\_

*(Mailing address)* \_\_\_\_\_  
\_\_\_\_\_

*(Email)* \_\_\_\_\_

*(Contact #'s)*            *(t)* \_\_\_\_\_    *(c)* \_\_\_\_\_