

## U.S. Army Looking for \$7 Billion in Renewable Energy Over the Next 10 Years

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In late February, the U.S. Army began its long-awaited process for signing up to \$7 billion in renewable energy contracts over the next 10 years when the Army Energy Initiatives Task Force (AEITF) issued a draft request for proposals (Draft RFP). During this pre-solicitation, the Draft RFP was issued to gather information from potential bidders to assist the AEITF in the development of a formal Request for Proposal (RFP) that it intends to issue later this year.

### I. Overview of the AEITF

The AEITF was created under the Assistant Secretary of the Army for Installations, Energy and Environment to manage the procurement of renewable energy generated on or near Army land. The AEITF enjoys a significant level of support among top Army officials and seems to have, thus far, a broad mandate. Earlier this year, it was able to prevent the base commander at a New York facility from executing an agreement with a cogeneration developer that had been planned for more than two years over the objections of New York Sen. Charles Schumer.

This Draft RFP is the beginning of the AEITF's plan to develop a large, coordinated procurement process for renewables. The AEITF's new program was developed in response to a National Defense Authorization Act that requires Department of Defense (DOD) facilities to derive at least 25 percent of the electricity they consume from renewable energy by 2025, and a DOD "Net Zero Energy" initiative, which challenges DOD installations to produce more energy than they consume, with emphasis on the use of renewable energy and alternative fuels.

### II. The Contracting Process

The contracting process proposed in the Draft RFP is one of the standard government contracting methods used by federal agencies and will be coordinated by the U.S. Army Engineering and Support Center, Huntsville (CEHNC). Based on the Draft RFP, the contracting process will be as follows:

- After the comment period closes on the Draft RFP, CEHNC will issue a formal RFP, under which interested renewable developers can submit detailed proposals establishing their qualifications – on a technology-specific basis – to furnish services under a Power Purchase Agreement (PPA) or contract equivalent. Responses to the RFP will require that the respondent provide a specific per-kWh price at which it is willing to provide renewable energy in the Contract Line Items Numbers (CLINs) portion of its response. This per-kWh price will act as the ceiling for a future Task Order award.
- As a result of the formal RFP process, CEHNC will issue a number of Indefinite Delivery/ Indefinite Quantity (ID/IQ) contracts to all qualified and responsible offerors. ID/IQ contracts should be viewed as “hunting licenses” – qualifying the awardee for the right to bid on specific projects in subsequent Task Order bidding processes for specific projects.
- Task Orders will be subsequently awarded to ID/IQ contract holders for specific PPAs. Only those offerors that were selected for each technology will be invited to propose on a particular Task Order request for proposal for that technology. Moreover, some Task Orders will be reserved for small businesses. The price established in the CLINs will be the ceiling rate for a Task Order award.

### III. The Renewable Technologies

The Draft RFP divides the “Renewable and Alternative Energy” (RAE) technologies into five categories:

- Solar-photovoltaic (PV) and/or concentrating solar thermal power (CSTP)
- Wind
- Geothermal
- Biomass<sup>1</sup>
- Other alternative energy technologies<sup>2</sup>

It should be noted that geothermal and biomass are considered continuous energy technologies since they replace electrical energy base load consumption. Therefore, a geothermal or biomass

contractor would be required to provide replacement energy at no cost when the system is not meeting minimum energy production requirements. In addition, the Draft RFP indicates that “grid isolation technology” will likely be required from such units so that a continuously operated plant will self-isolate, or “island,” and remain functional if there is an external grid power failure. The grid isolation effort would be included as an optional price in a Task Order.

It is possible that the Draft RFP gives some indication of what the AEITF is thinking about as far as the allocation of PPAs among various technologies. For the initial three-year (base) contracting period, the Draft RFP proposes the following quantities in draft CLINs:

## **Technology Quantity (kWh)**

Solar	1,500,000
Wind	9,000,000,000
Biomass	19,000,000,000
Geothermal	8,000,000,000

However, the Draft RFP also states that the government reserves the right to move capacity between CLINs and performance periods as necessary.

## **IV. Some PPA General Terms and Conditions**

Some of the language in the Draft RFP reads very broadly because the purpose of the Draft RFP is to solicit the renewable industry’s ideas and comments. In addition, the AEITF intends that the procurement process it is developing could be used as a template by other DOD branches or other federal agencies in their renewable energy procurement programs. The Draft RFP proposes the following key points:

- **Timeframe:** The AEITF is proposing to “procure reliable locally generated renewable and alternative energy (RAE) utilizing Power Purchase Agreements (PPAs)” or “other contractual equivalents” of up to 30 years.

- **Location:** The renewable facilities would be located on any federal property located in the United States or under the control of the U.S. government for the period of performance of the ensuing contract. A project could also be located on any property available for “use” by a contractor that is in proximity of the Army installation or federal property that would be the recipient of the renewable energy.
- **Compliance:** The Army will propose specific projects for specific types of renewable technologies and intends to “complete all documentation” for National Environmental Policy Act (NEPA) compliance before a Task Order is issued. A contractor shall be responsible for additional requirements including, but not limited to: all financial liabilities, regulatory requirements, utility interconnection, and all electrical, metering, and technical requirements.
- **Size:** The Draft RFP states that the AEITF will solicit “large scale” renewable projects of 10 MWs and over, but smaller projects may well be included within the acquisition program.
- **Ownership of RECs:** The government intends to take ownership of any renewable energy credits (RECs), unless otherwise specified.
- **Price:** The PPAs will be “firm fixed price” contracts, although some escalation rate clauses are contemplated.
- **Basis of Award:** Task Orders for PPAs will be awarded based on a “Best Value: Tradeoff Process or Lowest Price Technically Acceptable” standard. Typical evaluation factors may include (but not be limited to) the following: financial capability/durability, corporate technical experience, organizational/management approach, past performance, small business participation, and/or price.
- **Excess Energy Sales:** Excess energy sales to non-federal purchasers may be possible for certain projects.
- **Financing:** Third-party financing will be allowed, as will the use of special-purpose vehicles to own generating facilities.

## V. Getting Ready to Bid

Renewable developers intending to bid for an Army PPA need to be aware that they must first be awarded an ID/IQ contract, and when that occurs, the full scope of the DOD's contracting requirements will apply. The Draft RFP sets out numerous government contracting terms and conditions and compliance requirements, and there is no reason to expect the AEITF to eliminate such standard requirements when the final RFP is issued. Thus, in responding to the upcoming RFP, bidders will need to be prepared to enter into a unique activity dominated by numerous specialized rules. These rules governing this process are contained in statutes, regulations and decisions, and are applied to contractors, when appropriate. This includes fundamentals such as ensuring that a potential awardee can certify to myriad areas important to the procurement of goods and services, including, but certainly not limited to, lobbying limitations, registration in the Central Contract Registry, compliance with the Service Contract Act of 1965, and nondiscrimination provisions requiring equal opportunity in employment. In addition, detailed information about the bidder's financial capability/durability, corporate technical experience, organizational and management approach, past performance, small business participation, and/or price, will be required.

We suggest that potential bidders begin thinking about how best to respond to this unique opportunity and develop a coordinated and integrated comprehensive plan to prepare a proposal. This should include: (1) commenting on this Draft RFP (comments are due March 21, 2012), (2) internal company review to ensure compliance with the various required representations and certifications for an ID/IQ contract, and (3) planning on how to formulate a specific business proposal. It is unlikely there will be more than one bite at this proverbial apple, and being accepted as a responsible contractor under an ID/IQ contract is the only gateway to potentially countless opportunities that lay ahead.

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1. "Biomass" for purposes of the Draft RFP means all technologies that utilize organic material to generate a fuel or energy, such as, but not limited to, biomass-to-power, waste-to-energy, refuse derived fuels, and bio-fuels.
  2. "Alternative energy technologies" is defined as all other future renewable and current and future alternative technologies. This definition may include such items as fuel cells,



ground source heat pumps, thermal recovery systems, ocean oscillation power generation systems, energy storage, batteries, micro-grids, etc.

If you have any questions about the Draft RFP or DOD's renewable energy procurement programs, please contact the undersigned or your Reed Smith lawyer.

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