



SOUTHERN CALIFORNIA  
**EDISON**<sup>®</sup>

An *EDISON INTERNATIONAL*<sup>®</sup> Company

# **SOLAR PHOTOVOLTAIC PROGRAM FOR INDEPENDENT POWER PRODUCERS**

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## **2011 REQUEST FOR OFFERS**

for

**Renewable Energy from Solar Photovoltaic Generating  
Facilities**

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***RFO Participant Instructions***

*Revision 0 – \_\_\_\_\_, 2011*

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*SCE Comment:* Each of the above Appendices may be downloaded from  
<http://www.SCE.com/spvp-ipp>

## ARTICLE ONE. GENERAL INFORMATION

### 1.01 Introduction.

Southern California Edison Company (“SCE”), in its 2011 request for offers from independent power producers (“RFO”) for SCE’s Solar Photovoltaic Program (“Solar PV Program”), is soliciting offers (each, an “Offer”, and collectively, the “Offers”) from owners of eligible solar photovoltaic Generating Facilities to supply the Product<sup>1</sup> in accordance with these RFO Participation Instructions (“RFO Instructions”) and two Solar PV Program Power Purchase and Sale Agreements (each, a “PPA”, and collectively, the “PPAs”), the forms of which are attached hereto as Appendix A-1 and Appendix A-2.

Unless the context specifies or requires, (i) capitalized terms used but not otherwise defined in these RFO Instructions have the meanings set forth in the PPA applicable to the Offer, and (ii) references to any “Article”, “Section” or “Appendix” corresponds to the Article, Section or Appendix of these RFO Instructions.

SCE’s goal with respect to the Solar PV Program is to procure, over a five (5) year period, the Product from solar photovoltaic Generating Facilities using a standard PPA with a 20-year term. The total of the Gross Power Ratings of the Generating Facilities will be 250 MW<sup>2</sup> expressed in units of direct current (“MW<sub>DC</sub>”). The Generating Facilities will be primarily in the range of 1 to 2 MW<sub>DC</sub> and built on rooftops. However, SCE will procure the Product from ground-mounted Generating Facilities so long as the total of the Gross Power Ratings of all such ground-mounted Generating Facilities does not exceed ten percent (10%) of the total Solar PV Program goal of 250 MW<sub>DC</sub>.<sup>3</sup> SCE has executed contracts for 22.4 MW<sub>DC</sub> and therefore is anticipating limiting the procurement from ground mounted projects to 2.6 MW<sub>DC</sub>.<sup>4</sup>

Additionally, subject to the restrictions set forth in these RFO Instructions, SCE will also procure the Product from Generating Facilities with Gross Power Ratings of less than 1 MW<sub>DC</sub> and greater than 2 MW<sub>DC</sub>, provided that in no instance will SCE accept any Offer(s) for Generating Facilities with Gross Power Ratings of less than 500 kW<sub>DC</sub> or greater than 10 MW<sub>DC</sub>.

Offerors wishing to submit an Offer to SCE for one or more Generating Facilities with a combined Gross Power Rating of greater than 5 MW<sub>DC</sub> (but not greater than 10 MW<sub>DC</sub>) are not eligible to enter into the PPA attached hereto as Appendix A-1, but must execute

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<sup>1</sup> “Product” means (i) all solar photovoltaic electric energy produced by the Generating Facility, net of Station Use, and (ii) all Green Attributes, Capacity Attributes, and Resource Adequacy Benefits (as each additional term is defined in the PPA).

<sup>2</sup> On February 11, 2011 SCE filed a petition to modify Decision 09-06-049. The amount to be procured may change if the CPUC approves the petition to modify or otherwise changes the parameters of the program.

<sup>3</sup> The CPUC stated that it “expect[s] the bulk of the SPVP projects to be in the range of one to two MW and also on rooftops with some limited exception for ground-mounted projects. However, in no event should ground-mounted projects be more than 10% of the overall program capacity.” (D.09-06-049, p.40, fn. 48.)

<sup>4</sup> This limitation may increase if an existing contract is terminated prior to the deadline to execute contracts under this solicitation.

a different power purchase and sale agreement attached hereto as Appendix A-2, which contains additional terms and conditions, including, without limitation, additional credit, collateral, operational, performance and regulatory obligations.

The purpose of these RFO Instructions is to:

- (a) Set forth the requirements for the submission of each Offer, including, without limitation, waivers, representations, warranties and covenants deemed made for all purposes as part of each Offer submission, as well as the treatment of Confidential Information (as defined in Section 8.03(a));
- (b) Set forth the time-frame of the RFO;
- (c) Describe the methods that SCE uses to evaluate each Offer; and
- (d) Document the rights that SCE reserves for itself in the RFO.

These RFO Instructions, including its Appendices, are available on SCE's website at [www.sce.com/spvp-ipp](http://www.sce.com/spvp-ipp).

#### 1.02 SCE's Rights.

In its sole discretion and upon consideration of a variety of factors, as discussed in these RFO Instructions, SCE may enter into PPAs with one or more entities that submit Offers (each, an "Offeror") providing the greatest value to SCE's customers. SCE reserves the right to reject any Offer at any time on the grounds that it does not conform to the terms and conditions of these RFO Instructions. SCE may also, in its sole discretion modify these RFO Instructions, including any of its Appendices, as it deems necessary or reasonable in order to implement the RFO and to comply with Applicable Law.

#### 1.03 Document Conflicts.

If there is a conflict or inconsistency between the terms contained in these RFO Instructions (including Appendices B through E) and the forms of PPAs attached hereto as Appendix A-1 and Appendix A-2, the terms contained in the PPA applicable to the offer will prevail. Notwithstanding the foregoing, the terms of any PPA executed by SCE and Offeror as part of the RFO ("Final Agreement") will prevail over these RFO Instructions and each of the Appendices attached hereto, including the PPAs.

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\*\*\* *End of ARTICLE ONE* \*\*\*

## ARTICLE TWO. ELIGIBILITY REQUIREMENTS

### 2.01 Energy Resource Type and Eligibility.

SCE will consider all timely Offers, submitted pursuant to these RFO Instructions, from any Offeror that proposes to sell the Product to SCE from a Generating Facility.

SCE encourages Offeror to seek “pre-certification” as an Eligible Renewable Resource, as such term is defined in California Public Utilities Code Section 399.12 and 399.16 (“ERR”), before the date that the Offer (as specified in Section 3.03) must be submitted to SCE.<sup>5</sup>

### 2.02 Generating Facility.

- (a) The Generating Facility must be a photovoltaic electric energy generating facility.
- (b) The Site on which Offeror’s Generating Facility is located must be within SCE’s service territory.
- (c) The Generating Facility must be located on a rooftop, provided that SCE may accept Offers from Offerors with solar photovoltaic ground-mounted Generating Facilities, subject to the ten percent (10%) maximum limitation on the total capacity of ground-mounted projects.
- (d) The Generating Facility must have a Gross Power Rating of no less than 500 kW<sub>DC</sub> and no more than 10 MW<sub>DC</sub>.
- (e) Subject to Section 2.02(c), a single Offer may be comprised of the aggregation of multiple Generating Facilities delivering the Product to the same PNode (as defined in the CAISO Tariff), provided that each Generating Facility has a Gross Power Rating of at least 500 kW<sub>DC</sub>.
- (f) The Offeror of a Generating Facility with a Gross Power Rating of more than 5 MW<sub>DC</sub> must execute the PPA attached hereto as Appendix A-2.

### 2.03 Term.

The Term of any final PPA will be twenty (20) years. The Generating Facility must be scheduled to commence Operation on the Term Start Date, which must occur within 18 months of CPUC Approval.

### 2.04 Interconnection; Delivery Point.

All Generating Facilities must be interconnected to SCE’s electric system. The Delivery Point for a Generating Facility will be the PNode for the Generating Facility.

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<sup>5</sup> For details on ERR qualifications, see the California Energy Commission’s “Renewables Portfolio Standard (RPS) Eligibility Guidebook” (January 2008, Publication #CEC-300-2007-006-ED3-CMF), which is available at <http://www.energy.ca.gov/renewables/documents/>.

2.05 SCE Affiliates.

SCE affiliates are permitted to participate in the RFO. Using the Offer Template, as further described in Appendix B, Offeror must disclose whether or not it is an SCE affiliate.

2.06 Supplier Diversity.

SCE encourages Women-Owned, Minority-Owned, and Disabled Veteran-Owned Business Enterprises (WMDVBE) to participate in the 2011 SPVP RFO. To be considered as a WMDVBE, Offeror must meet certain requirements. Information on SCE's diversity supplier program can be found at <http://www.sce.com/CommunityandRecreation/Diversity/supplier-diversity/default.htm>.

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\*\*\* *End of ARTICLE TWO* \*\*\*

## ARTICLE THREE. RFO PROCESS

### 3.01 Summary of the RFO Schedule.

<i>Date</i>	<i>Event</i>
(T <sub>1</sub> = 0)	CPUC approves advice letter for implementation of 2011 Solar PV Program RFO.
TBD (Prior + ~1 week)	<b>SCE launches RFO.</b> SCE posts RFO Instructions, pro forma PPAs and other RFO materials on SCE's web site.
TBD (Prior + ~2 weeks)	SCE hosts RFO Web Conference (see §3.02).
(T <sub>2</sub> = 0)	Cluster 4 Phase I interconnection studies completed (planned date is October 15, 2011)
TBD (T <sub>2</sub> + ~2 weeks) <sup>6</sup> 11:00 a.m. Pacific Prevailing Time	<b>Auction.</b> Participants submit Offers and required documentation including populated PPAs (see §3.03).
TBD (Prior + ~5 weeks)	SCE advises Offerors on the short-list status of their Offers and provides executable PPAs (see §3.04).
TBD (Prior + ~1 week)	Offerors submit executed PPAs (see §3.05).
TBD (Prior + ~2 weeks)	SCE executes final PPAs (see §3.05).
TBD (Prior + 60 days)	SCE submits Tier 2 Advice Letter seeking CPUC Approval for executed PPAs (see §3.06).

### 3.02 RFO Web Conference.

On [date TBD], SCE will host a web conference to discuss the RFO process with potential participants in the RFO process. Information on how to attend the conference will be made available on the website ([www.sce.com/spvp-ipp](http://www.sce.com/spvp-ipp)) by [date TBD].

### 3.03 Auction – Submission of Offer(s).

SCE must receive each complete Offer, conforming to these RFO Instructions, by 11:00 a.m. Pacific Prevailing Time on [date TBD]. Participants must submit Offer(s) to SCE and the Independent Evaluator in accordance with Article Seven. SCE is not responsible

<sup>6</sup> The schedule assumes that T<sub>1</sub> (CPUC approval of the advice letter) occurs at least 4 months before T<sub>2</sub> (completion of Phase I interconnection studies). If not, the auction will take place approximately 4 months after launch of the RFO.

for Offers received after the submittal deadline due to unsuccessful delivery or otherwise. SCE will only consider submissions that, as of the submittal deadline, constitute a complete and conforming Offer.

In order to be eligible for short-list selection, all Offers must include all of the following documents, which must be completely filled out electronically and returned by email in accordance with the provisions of Article Five of these RFO Instructions:

- (1) An executed Offer Template, including the Revenue Calculator (attached hereto as Appendix B).
- (2) A Site Control Acknowledgement Letter and copies of the site control document(s) demonstrating 100% site control through (a) direct ownership, (b) lease, or (c) an option to lease or purchase that may be exercised upon execution of the applicable PPA.
- (3) A completely executed Site Owner's Acknowledgement Letter.
- (4) A Summary of Developer Experience.
- (5) A copy of a complete System Impact Study, Phase I Interconnection Study or documentation showing that the project has passed WDAT Fast Track screens.<sup>7</sup>
- (6) A populated PPA with all proposed Seller information and Generating Facility information inserted, which must include:
  - a. For the  $\leq 5$  MW<sub>DC</sub> PPA:
    - i. First paragraph
    - ii. Section 2 – Generating Facility and Site; Delivery Point; Product Price; Scheduling Coordinator
    - iii. Signature block (name and title of person who will sign)
    - iv. Appendix B – Complete description of the Generating Facility and the Site
    - v. Appendix F – Notice List
  - b. For the  $> 5$  MW<sub>DC</sub> to 10 MW<sub>DC</sub> PPA:
    - i. Article One – Special Conditions
    - ii. Signature block (name and title of person who will sign)
    - iii. Exhibit B – Complete description of the Generating Facility and the Site
    - iv. Exhibit C – Notice List
    - v. Exhibit G – Seller's Milestone Schedule

Except for completing the PPA, Offeror should not make any changes to the PPA.

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<sup>7</sup> See <http://www.sce.com/AboutSCE/Regulatory/openaccess/default.htm>.

### 3.04 Evaluation and Short-Listing of Offers.

SCE will screen Offers on a “pass-fail” basis against the following eligibility criteria:

- Generating facility is a photovoltaic electric energy generating facility, 10 MW<sub>DC</sub> or less
- Project has received a complete System Impact Study or Phase I Interconnection Study, or has passed the WDAT Fast Track screens
- Product Price is not greater than \$192.50/MWh AC<sup>8</sup>
- Site is within SCE’s service territory
- Developer has Site Control
- Site Owner has not received and will not receive Net Energy Metering or California Solar Initiative incentive payments for the Generating Facility
- Forecasted Commercial Operation Date is within 18 months of CPUC Approval of executed PPA
- Project employs commercially proven technology
- Team meets minimum level of developer experience<sup>9</sup>
- SCE affiliation is disclosed, if applicable
- Delivery point is at the first point of interconnection to CAISO controlled grid
- Offeror agrees to non-disclosure requirements in the RFO Instructions

SCE will rank eligible Offers based on a renewable premium analysis, which considers transmission costs and weighs total levelized costs against levelized benefits to SCE’s resource portfolio.

SCE will notify each Offeror by email no later than close of business on [date TBD] as to whether or not Offeror’s Offer has been short-listed. If necessary, SCE may request additional information prior to short-listing. SCE will provide executable PPA documents at the time of short-listing.

**NOTE: Offeror is under confidentiality obligations upon submittal of an Offer in accordance with the terms specified in Article Five.**

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<sup>8</sup> Average annual costs to SCE, including Energy Payment Allocation Factors for the TOU Periods, are not to exceed \$260/MWh AC, which is the levelized cost of electricity for SCE’s utility-owned solar photovoltaic program’s generation. SCE estimates that, over the Term of the PPA, and including the Energy Payment Allocation Factors for the TOU Periods, a \$192.50 MWh AC Binding Product Price will result in annual average costs equal to \$260/MWh AC (i.e., \$192.50 x 1.35). The estimated difference between the average annual costs of \$260/MWh AC and the \$192.50/MWh AC is a result of photovoltaic projects delivering the majority of their energy during peak periods).

<sup>9</sup> Minimum developer experience means “that at least one member of the development team has either begun or completed construction of at least one project similar to the one” in the Offer. (D.10-12-048, p. 67.)

3.05 Preparation and Execution of PPAs.

At the time of short-listing, a short-listed Offeror will receive from SCE an executable PPA filled in with the Project and Seller information provided in the Offer Template and in the populated PPA. Offerors should carefully review the populated PPA for any errors.

[Date TBD] will be the last day for Offerors to submit an executed PPA and return two (or more, at Offeror's discretion) executed originals of the PPA to SCE by overnight delivery to the following:

Renewable and Alternative Power  
Southern California Edison  
GO1, Quad 4D  
2244 Walnut Grove  
Rosemead, CA 91770

Attn: George Wiltsee  
626-302-4945

On or before [date TBD], SCE will execute each final PPA and return one fully executed PPA to Offeror.

3.06 Submission of the Final Agreements to the CPUC.

No later than [date TBD], SCE will submit a Tier 2 advice letter to the California Public Utilities Commission ("CPUC") seeking approval of the PPAs entered into pursuant to the RFO.

3.07 Independent Evaluator.

In accordance with the requirements set forth in D.09-06-049, SCE has engaged an Independent Evaluator to evaluate and report on the RFO ("Independent Evaluator"), including the evaluation, selection, and negotiation process for the RFO. The Independent Evaluator will review all Offers and will have the opportunity to be present at meetings and conference calls between SCE and Offerors.

In accordance with Article Seven, Offeror must include the Independent Evaluator in all e-mail communications with SCE related to the RFO.

None of the activities of the portion of the Solar PV Program (commonly called utility-owned generation) whereby SCE will own, install, operate and maintain distributed solar PV projects in SCE's service territory will fall within the scope of the Independent Evaluator.

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\*\*\* End of ARTICLE THREE \*\*\*

## **ARTICLE FOUR. REGULATORY APPROVAL**

### 4.01 CPUC and FERC Approvals.

SCE's obligations to purchase power under a Final Agreement will only become effective upon CPUC Approval (as defined in the PPAs) of the Final Agreement.

If a Final Agreement is entered into between SCE and any of its affiliates, such Final Agreement may also require an approval by the FERC. In such an instance, SCE's obligations under the Final Agreement will only become effective upon approval by both the CPUC and the FERC.

### 4.02 Support for Regulatory Purposes.

Offeror may be requested, and shall work with SCE to provide any information requested in the RFO for purposes of filing applications or advice letters with the CPUC.

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*\*\*\* End of ARTICLE FOUR \*\*\**

## ARTICLE FIVE. CONFIDENTIALITY

### 5.01 Treatment of Confidential Information.

Each of SCE and Offeror (individually, a “Party” and collectively, the “Parties”) acknowledges and agrees that, as of the date of Offeror’s submission of a Non-Binding Offer to SCE (the “Non-Binding Offer Submission Date”), each Party shall be bound by this Article Five, including each of the following provisions:

- (a) Each Party agrees to treat Confidential Information (as defined in Section 5.03(a)) as confidential with respect to third parties and must not disclose Confidential Information except as specifically authorized in this Article Five or as specifically agreed to by each Party in writing. Accordingly, each Party must take all necessary precautions and implement all requisite procedures and practices to protect Confidential Information provided by the other Party; and
- (b) Notwithstanding anything to the contrary set forth herein, SCE agrees that SCE employees and contractors responsible for or otherwise materially involved in all or part of the independent power producer or competitive portion of the Solar PV Program or the related interconnection process must not disclose Confidential Information to any SCE employee or contractor working in the Project Development Division (as defined in Section 5.03(b)).

### 5.02 Permitted Disclosures.

Subject to the limitations set forth in Section 5.01(b), each Party may disclose Confidential Information only to its employees, directors, advisors, attorneys, consultants or accountants who have a strict need to know solely for the purpose of directly assisting such disclosing Party in evaluating any Offer (“Permitted Disclosee”), or in subsequent discussions or negotiations regarding such Offer and so long as such disclosing Party advises each Permitted Disclosee of the confidential nature of the Confidential Information and uses reasonable efforts to prevent or limit the disclosure of Confidential Information by such Permitted Disclosee. In addition, the Independent Evaluator for the RFO (as described in Section 3.07) is and must be deemed to be a Permitted Disclosee. Each Party may also disclose Confidential Information to representatives of its rating agencies who have a strict need to know solely for the purpose of directly assisting such disclosing Party in evaluating an Offer, so long as such disclosing Party advises the rating agency of the confidential nature of the Confidential Information and uses reasonable efforts to prevent or limit the disclosure of Confidential Information by any such rating agency.

SCE and the Independent Evaluator for the RFO may also disclose Confidential Information to the CPUC, the PRG, the California Energy Commission (“CEC”), and the CAISO and each of their staff and divisions thereof in furtherance of the RFO. Although SCE will seek confidential treatment of any Confidential Information submitted by it to the CPUC, by means of a motion for protective order under Public Utilities Code section 583 and General Order 66-C, or by appropriate application to or agreement with the PRG,

the CAISO and the CEC, SCE may disclose Confidential Information under this paragraph even if no protective order is issued and no confidentiality or non-disclosure agreements are entered into. Neither SCE nor the Independent Evaluator for the RFO shall have any liability whatsoever to any party in the event of any unauthorized use or disclosure by a governmental or regulatory agency or entity, including, without limitation, the CPUC and all divisions thereof, the CEC, the FERC, the PRG, or the CAISO, of any Confidential Information or other information disclosed to any of them by SCE or its representatives.

### 5.03 Certain Defined Terms.

For purposes of these RFO Instructions:

- (a) “Confidential Information” means all oral or written (including electronic) communications exchanged between the Parties related to an Offer or interconnection request, including, without limitation, the fact that an Offeror has submitted an Offer, and if applicable the facts (1) that SCE has short-listed the Offer, and (2) the Parties are negotiating the Offer.

Notwithstanding anything to the contrary set forth herein, the obligations set forth in this Article Five do not apply to, and the term “Confidential Information” does not include:

- (i) Information that is in the public domain as of the Non-Binding Offer Submission Date or that later comes into the public domain from a source other than from the Party obligated to treat the Confidential Information as confidential, as well as such Party’s Permitted Disclosee or representatives of such Party’s rating agencies;
  - (ii) Information that SCE or Offeror can demonstrate in writing was already known to SCE or Offeror, as applicable, before the Non-Binding Offer Submission Date;
  - (iii) Information which comes to SCE or Offeror from a bona fide third party not under an obligation of confidentiality; or
  - (iv) Information which is independently developed by SCE or Offeror without use of or reference to Confidential Information or information containing Confidential Information.
- (b) “Project Development Division” means the organization at SCE responsible for, among other things, the implementation of the portion of the Solar PV Program (commonly called utility-owned generation) whereby SCE will own, install, operate and maintain distributed solar photovoltaic projects in SCE’s service territory, as further described in CPUC Decision 09-06-049.

### 5.04 Miscellaneous.

- (a) The Parties agree that irreparable damage would occur if the terms and conditions set forth in this Article Five were not performed in accordance with its terms or were otherwise breached. Accordingly, a Party may be entitled to seek an injunction or injunctions to prevent breach of the terms and conditions set forth in this Article Five and to enforce specifically its provisions in any court of competent jurisdiction, in addition to any other remedy to which such Party may be entitled by law or equity.
- (b) The Parties agree not to introduce into evidence or otherwise voluntarily disclose in any administrative or judicial proceeding, any Confidential Information, except as required by Applicable Law or with the written consent of the Party providing the Confidential Information or as SCE or Offeror may be required to disclose to duly authorized governmental or regulatory agencies, including the CPUC or any division thereof, in order to demonstrate the reasonableness of its actions.
- (c) All written Confidential Information supplied by a Party, and all copies or translations thereof made by the Party or Permitted Disclosee who received the Confidential Information, shall, upon written request of the Party who initially provided the Confidential Information, be returned to that Party, destroyed, or held and maintained subject to the terms of this Article Five, provided that a Party or Permitted Disclosee is not be obligated to return or destroy any Confidential Information contained in its archive computer back-up system and, provided further, that a Party may retain copies of Confidential Information to the extent that retention is required by Applicable Law.
- (d) Nothing in this Article Five is intended to waive any attorney-client, work-product or other privilege applicable to any statement, document, communication, or other material of any Party.
- (e) The terms of this Article Five shall be effective as of the Non-Binding Offer Submission Date and shall terminate five (5) calendar years thereafter, or earlier upon the mutual written consent of the Parties or as required by Applicable Law.
- (f) This Article Five shall be interpreted, governed and construed under the laws of the State of California (without giving effect to its conflict of laws provisions that could apply to the law of another jurisdiction) as if executed in and to be wholly performed within the State of California.
- (g) If any provision of this Article Five is unenforceable or invalid, it shall be given effect to the extent it may be enforceable or valid, and such enforceability or invalidity will not affect the enforceability or invalidity of any other provision of this Article Five.

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\*\*\* End of ARTICLE FIVE \*\*\*

**ARTICLE SIX. WAIVERS AND RESERVATION OF RIGHTS;  
REPRESENTATIONS, WARRANTIES AND COVENANTS**

6.01 Modification or Termination of the RFO.

SCE reserves the right at any time to modify any dates specified in the RFO or abandon the RFO without notice, without assigning any reasons, and without liability of Edison International, SCE or any of their subsidiaries, affiliates or representatives to any Offeror.

SCE will not be deemed to have accepted any Offer, and will not be bound by any term thereof, unless and until authorized representatives of SCE and Offeror execute a Final Agreement.

If the RFO is terminated by SCE, Offeror shall be responsible for any expenses incurred by Offeror as a result of the RFO.

6.02 Release of SCE for any Delays.

Offeror acknowledges that except for SCE's obligation to submit a fully executed Final Agreement to the CPUC for CPUC Approval, Offeror bears sole responsibility for submitting all applications and obtaining all permits, leases or mortgages, and interconnection, financing and other agreements necessary for Offeror to perform under a Final Agreement. Offeror further acknowledges and agrees that, subject to Applicable Law (including, without limitation FERC rules and regulations), SCE shall have no liability for the:

- (a) Time required to complete any studies, obtain any required permits for Generating Facility operation, or enter into any agreements discussed or contemplated under the RFO (including, without limitation, interconnection studies, leases, mortgages, financing or permits);
- (b) Time required to perform construction for interconnection facilities or distribution upgrades necessary to meet any Term Start Date;
- (c) Time to construct the Generating Facility;
- (d) Direct Assignment Costs; or
- (e) Time required to acquire any environmental permits to construct or operate, including, without limitation, acquisition of any emission credits required by law or regulation.

6.03 Waived Claims.

By submitting an Offer, Offeror knowingly, voluntarily, and completely waives any rights under statute, regulation, state or federal constitution or common law to assert any claim, complaint or other challenge in any regulatory, judicial or other forum, including without limitation, the CPUC (except as expressly provided below), the FERC, the

Superior Court of the State of California (“State Court”) or any United States District Court (“Federal Court”) concerning or related in any way to the RFO or these RFO Instructions, including all Appendices hereto (“Waived Claims”). Offeror further expressly acknowledges and agrees that if it asserts any Waived Claim at the CPUC, FERC, State Court or Federal Court, or otherwise in any forum, to the extent that Offeror’s Offer has not already been disqualified, SCE is entitled to disqualify this Offer automatically from further consideration in the RFO or otherwise, and further, SCE may elect to terminate the RFO.

By submitting an Offer, Offeror further agrees that the sole forum in which Offeror may assert any challenge with respect to the conduct or results of the RFO is at the CPUC. Offeror further agrees that: (a) the sole means of challenging the conduct or results of the RFO is a complaint filed under Article 3, Complaints and Commission Investigations, of Title 20, Public Utilities and Energy, of the California Code of Regulations; (b) the sole basis for any such protest shall be that SCE allegedly failed in a material respect to conduct the RFO in accordance with these RFO Instructions, as may be revised from time to time; and (c) the exclusive remedy available to Offeror in the case of such a protest shall be an order of the CPUC that SCE again conduct any portion of the RFO that the CPUC determines was not previously conducted in accordance with these RFO Instructions, as may be amended from time to time (including the Appendices attached hereto). Offeror expressly waives any and all other remedies, including, without limitation, compensatory and/or exemplary damages, restitution, injunctive relief, interest, costs and/or attorneys’ fees. Unless SCE elects to do otherwise in its sole discretion, during the pendency of such a protest, the RFO and any related regulatory proceedings related to the RFO will continue as if the protest had not been filed, unless the CPUC issues an order suspending the RFO or SCE has elected to terminate the RFO.

Offeror further acknowledges and agrees that if Offeror asserts any Waived Claim, SCE shall be entitled to seek immediate dismissal of Offeror’s claim, complaint or other challenge, with prejudice, by filing a motion to dismiss (or similar procedural device) supported by the language in this Article Nine and that Offeror will not challenge or oppose such a request for dismissal. Offeror further acknowledges and agrees that if it asserts any Waived Claim, and if SCE successfully has that Waived Claim dismissed or transferred to the CPUC, Offeror shall pay SCE’s full costs and expenses incurred in seeking such dismissal or transfer, including reasonable attorneys’ fees.

Offeror agrees to indemnify and hold SCE harmless from any and all claims by any other Offeror asserted in response to the assertion of any Waived Claim by Offeror or as a result of an Offeror’s protest to a filing at the CPUC resulting from the RFO.

Except as expressly provided in these RFO Instructions, nothing in these RFO Instructions, including Offeror’s waiver of any Waived Claims as set forth above, shall in any way limit or otherwise affect the rights and remedies of SCE.

#### 6.04 Offeror's Representations, Warranties and Covenants.

- (a) By submitting an Offer, Offeror agrees to be bound by the conditions of the RFO, and makes the following representations, warranties, and covenants to SCE, which representations, warranties, and covenants shall be deemed to be incorporated in their entirety into each of Offeror's Offers:
  - (i) Offeror has read, understands and agrees to be bound by all terms, conditions and other provisions of these RFO Instructions;
  - (ii) Offeror has had the opportunity to seek independent legal and financial advice of its own choosing with respect to the RFO and these RFO Instructions, including the Appendices attached hereto;
  - (iii) Offeror has obtained all necessary authorizations, approvals and waivers, if any, required by Offeror to submit its Non-Binding Offer and, if Offeror submits a Binding Offer pursuant to the terms of these RFO Instructions, to enter into a Final Agreement with SCE;
  - (iv) Offeror's Offer complies with all Applicable Laws;
  - (v) Offeror has not engaged, and covenants that it will not engage, in any communications with any other actual or potential Offeror in the RFO concerning this solicitation, price terms in Offeror's Offer, or related matters and has not engaged in collusion or other unlawful or unfair business practices in connection with the RFO;
  - (vi) If Offeror is deemed eligible by SCE to submit a Binding Offer, any Binding Offer submitted by Offeror is subject only to SCE's acceptance, in SCE's sole discretion; and
  - (vii) The information submitted by Offeror to SCE in connection with the RFO and all information submitted as part of any Offer is true and accurate as of the date of Offeror's submission. Offeror also covenants that it will promptly update such information upon any material change thereto.
  
- (b) By submitting an Offer, Offeror acknowledges and agrees that:
  - (i) SCE may rely on any or all of Offeror's representations, warranties, and covenants in the RFO (including any Offer submitted by Offeror);
  - (ii) SCE may disclose information as set forth in Article Five of these RFO Instructions; and
  - (iii) In SCE's evaluation of Offers pursuant to the RFO, SCE has the right to disqualify an Offeror that is unwilling or unable to meet any other requirement of the RFO, as determined by SCE in its sole discretion.

- (c) BY SUBMITTING AN OFFER, OFFEROR HEREBY ACKNOWLEDGES AND AGREES THAT ANY BREACH BY OFFEROR OF ANY OF THE REPRESENTATIONS, WARRANTIES AND COVENANTS IN THESE RFO INSTRUCTIONS SHALL CONSTITUTE GROUNDS FOR IMMEDIATE DISQUALIFICATION OF SUCH OFFEROR, IN ADDITION TO ANY OTHER REMEDIES THAT MAY BE AVAILABLE TO SCE UNDER APPLICABLE LAW, AND DEPENDING ON THE NATURE OF THE BREACH, MAY ALSO BE GROUNDS FOR TERMINATING THE RFO IN ITS ENTIRETY.

6.05 Good Faith Dealings.

It is expected that the Parties will act in good faith in their dealings with each other with respect to this RFO.

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\*\*\* *End of ARTICLE SIX* \*\*\*

## **ARTICLE SEVEN. COMMUNICATIONS**

Unless otherwise stated in these RFO Instructions, any exchange of any material information by electronic, written, oral or other means concerning the RFO, including any such exchange concerning the preparation of Offers or other submissions to SCE related to the RFO, must be submitted to both SCE and the Independent Evaluator for the RFO in the form of an e-mail at the following e-mail addresses:

(a) To SCE: [spvp-ipp@sce.com](mailto:spvp-ipp@sce.com); and

(b) To SCE's Independent Evaluator, Accion Group, Inc.: [sceie@acciongroup.com](mailto:sceie@acciongroup.com).

**Note: The maximum size of any email submitted to SCE is 8 MB.**

The website address for the RFO is <http://www.sce.com/spvp-ipp>.

SCE may, in its sole discretion, decline to respond to any e-mail or other inquiry without liability or responsibility.

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*\*\*\* End of ARTICLE SEVEN \*\*\**

## **APPENDIX A-1**

*Form of Solar Photovoltaic Program Power Purchase and Sale Agreement Not Greater than 5  
MW<sub>DC</sub>*

*The Pro Forma PPA is a separate Microsoft Word file, posted separately on the SCE web page for the Program (<http://www.sce.com/spvp-ipp>).*

## **APPENDIX A-2**

***Form of Solar Photovoltaic Program Power Purchase and Sale Agreement Greater than 5  
MW<sub>DC</sub> but Not Greater than 10 MW<sub>DC</sub>***

*The Pro Forma PPA is a separate Microsoft Word file, posted separately on the SCE web page for the Program (<http://www.sce.com/spvp-ipp>).*

## **APPENDIX B**

### *Offer Template*

*The Offer Template is a separate Microsoft Excel file, posted separately on the SCE web page for the Program (<http://www.sce.com/spvp-ipp>). The template includes the Revenue Calculator and an Attachment Checklist for Exhibit B of the PPA.*

## **APPENDIX C**

### ***Form of Site Control Acknowledgement Letter***

*The Site Control Acknowledgement Letter is a separate file, posted separately on the SCE web page for the Program (<http://www.sce.com/spvp-ipp>).*

## **APPENDIX D**

### *Form of Site Owner's Acknowledgement Letter*

*The Site Owner's Acknowledgement Letter is a separate file, posted separately on the SCE web page for the Program (<http://www.sce.com/spvp-ipp>).*

## **APPENDIX E**

### *Form of Summary of Developer Experience*

*The Form of Summary of Development Experience is a separate file, posted separately on the SCE web page for the Program (<http://www.sce.com/spvp-ipp>).*