



# **2013-14 Aggregator Managed Portfolio (AMP) Program**

## **Request for Offers (RFO) Protocol**

**May 25, 2012 (Updated June 18, 2012)**

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## I. Introduction and Overview:

### A. Overview

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Pacific Gas and Electric Company (“PG&E”) is an investor-owned gas and electric utility based in San Francisco, California with a service area of nearly 70,000 square-miles serving approximately 5 million electric customers in northern and central California. PG&E’s service area stretches from Eureka in the north to Bakersfield in the south, and from the Pacific Ocean in the west to the Sierra Nevada in the east.

The California Public Utilities Commission (“CPUC”) issued a Decision Adopting Demand Response Activities and Budgets for 2012 Through 2014 (D.12-04-045), dated April 30, 2012 that requires PG&E to continue using demand response resources provided by third parties through the Aggregator Managed Portfolio (AMP) program.

PG&E is seeking a minimum of 180 MW of Demand Response (DR) Product for 2013 and 2014. PG&E requests that entities (“Participants”) that meet the criteria established in this document (the “RFO Protocol”) offer one or more Product Types.

The proposed terms and conditions defining the DR Products sought by PG&E are described in the Demand Response Purchase Agreement (“Agreement”). Some terms contained in this RFO are defined in the Agreement.

### B. Expected Schedule

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The RFO schedule is subject to change at PG&E’s sole discretion at any time. PG&E will endeavor to notify Participants of any schedule change via notification on the Company’s RFO website. Participants must sign up at the RFO website to receive notice of these and other RFO changes by electronic mail. PG&E is not liable or responsible to any Participant for expenses or any damage to Participant resulting from changes in the schedule or for failing to provide notice of any change.

The expected schedule for this RFO (**all times are in Pacific Prevailing Time “PPT”**):

<b>Date/Time</b>	<b>Event</b>
May 25, 2012	PG&E issues AMP RFO.
May 30, 2012, 5:00 P.M.	Deadline to submit questions for the Participants’ Webinar to PG&E via email to <a href="mailto:AMPRFO@pge.com">AMPRFO@pge.com</a> .
June 1, 2012, 5:00 P.M.	Deadline to submit registration for Participants’ Webinar.
June 6, 2012	Participants’ Webinar.
June 22, 2012, 1:00 P.M.	Deadline for Participants to submit completed Offer(s). Offers will not be evaluated until after the Deadline.

July 20, 2012	PG&E notifies Participants if their offer is shortlisted or rejected.
July 27, 2012	Deadline for shortlisted Participants to improve the competitiveness of their offer.
August 1, 2012	PG&E notifies shortlisted Participants if their offer is accepted or rejected.
August 1-3, 2012	Target timeframe for execution of Agreements.
September 7, 2012	PG&E files Application at CPUC for approval of executed Agreements.

For an offer to be considered in the RFO, a Participant must submit and PG&E must receive a complete offer in accordance with the RFO no later than 1:00 P.M. PPT on June 22, 2012.

The CPUC directed PG&E to file an Application for the approval of any Agreements resulting from this RFO no later than September 7, 2012. The Agreements entered into by PG&E and Participants are contingent upon PG&E's receipt of approval of the Agreements from the CPUC. The Agreement will not be effective on PG&E or Participant until PG&E receives final CPUC approval.

PG&E is fully committed in this RFO to minimizing the amount of time required to negotiate Agreements and obtain CPUC approval, while ensuring that the Participants have sufficient time to prepare offers and PG&E has sufficient time to evaluate and review offers to ensure the most competitive offers are selected. The most significant way to reduce the amount of time spent in the RFO process is for Participants to provide all of the Required Information and not make changes to the Agreement. As described in Section III "Evaluation of Offers", the evaluation criteria include a Participant's conformance with the non-price terms and conditions in the Agreement. Participant's conformance to the non-price terms and conditions in the Agreement will be valued in the evaluation and shortlisting process. Minimizing or eliminating changes will significantly expedite the RFO process for a Participant.

### **C. RFO Process**

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1. Offers Due. Participant's offer must be submitted to PG&E and the Independent Evaluator ("IE")<sup>1</sup> in the manner set forth in Section V.A. no later than 1:00 P.M. PPT on June 22, 2012 and must include all of the documents described in Section V.B. For multiple offers, Participant must submit one Offer Form (Attachment A) for each Product Type. By participating in this RFO, the Participant agrees to be bound by all of the terms, conditions and other provisions of this RFO Protocol and any changes or supplements to it that may be issued by PG&E. Each Participant will be required to have an authorized officer of Participant execute the

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<sup>1</sup> Lewis Hashimoto of Arroyo Seco Consulting will provide IE services for this RFO. His e-mail address is lhashimoto@att.net.

“Offer Agreement” attached hereto as Attachment B. In submitting offers, Participants should provide all of the requested information in the format requested.

2. PG&E Selects Shortlist. PG&E intends to select a shortlist of offers no later than July 20, 2012. PG&E reserves the right to adjust this date, request additional information from Participants with shortlisted offers, and subsequently to select additional offers for the shortlist.

3. Negotiations and Execution. Subject to Section I.D. below, PG&E may enter into discussions with shortlisted Participants regarding the terms of the applicable offer. Selection for the shortlist does not guarantee that PG&E will execute an Agreement with a Participant. Shortlisted Participants will have an opportunity to improve the competitiveness of their offer to increase the chances of execution within five (5) days of receiving notification of shortlist status; any offer that is modified by a Participant in a way that reduces its value may result in its disqualification from the RFO or removal from the shortlist at any time.

#### **D. Disclaimers for Rejecting Offers and/or Terminating this RFO**

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This RFO does not constitute an offer to buy and creates no obligation to execute any Agreement or to enter into a transaction under an Agreement as a consequence of the RFO. PG&E shall retain the right at any time, at its sole discretion, to reject any offer on the grounds that it does not conform to the terms and conditions of this RFO or the Agreement, and reserves the right to request information from a Participant at any time during the solicitation process. PG&E also retains the discretion, in its sole judgment, to: (a) reject any offer on the basis that it does not provide sufficient customer benefit or that it would impose conditions that PG&E determines are impractical or inappropriate; (b) formulate and implement appropriate criteria for the evaluation and selection of offers; (c) negotiate with any Participant to maximize customer benefits including the terms and conditions of the Agreement; (d) modify this RFO including the forms of Agreement as it deems appropriate; and (e) terminate the RFO should the CPUC or other governmental authority not authorize PG&E to purchase Demand Response Products in the manner proposed in this RFO. In addition, PG&E reserves the right to either suspend or terminate this RFO at any time for any reason whatsoever. PG&E will not be liable in any way, by reason of such withdrawal, rejection, suspension, termination or any other action described in this paragraph to any Participant, whether submitting an offer or not.

## **II. RFO Goals:**

In this RFO, PG&E is requesting offers for the different Types of Product described in Section 3.1 of the Agreement, attached hereto as Attachment D.

### **A. Demand Response Product (“Product”)**

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PG&E seeks offers for Products that would form the basis of its AMP program for a minimum of 180 MW. Product means the energy reduction that the Seller has committed to provide at the Delivery Point within the period designated from the issuance of the Notice of DR Event during the Delivery Season, where the Delivery Season are the calendar months of May through October of the years 2013 and 2014.

Product must be available (for call or dispatch) Monday through Friday, from 11:00am to 7:00 pm Pacific Prevailing Time (“PPT”), excluding North American Electric Reliability Council (NERC) holidays, subject to the limitations set forth in the Agreement.

Participants may submit one offer from for each of the Types of Product specified in Table 3.1 of the Agreement and as shown below.

	Product Type Reference	Type of Product	Notification Period	Delivery Point
<input type="checkbox"/>	A	Day-Of with Local Dispatch	No less than 30 minutes in advance of first DR Hour in the Notice of DR Event	Any one or more LCA
<input type="checkbox"/>	B	Day-Ahead with Local Dispatch	No later than 3:00PM, PPT on the day before the operating day for which Buyer has Noticed a DR Event	Any one or more LCA
<input type="checkbox"/>	C	Day-Of	No less than 30 minutes in advance of first hour Buyer has Noticed as a DR Event	System-wide
<input type="checkbox"/>	D	Day-Ahead	No later than 3:00PM, PPT on the day before the operating day for which Buyer has Noticed a DR Event	System-wide

This RFO limits the terms and conditions of the Agreement that are negotiable. For each Type of Product offered, Participant may designate the Annual Capacity Price and the Portfolio Size.

Minimum Portfolio Size: Seller's Portfolio shall be a minimum of 5 MW. Seller's Portfolio is described in Section 3.3 in the Agreement.

Delivery: Product shall be provided by a Seller based on Customers in PG&E's electric service who may be a person(s) or entities receiving one of the following energy services from PG&E pursuant to a Service Agreement for final delivery and not for resale: Bundled Service, Direct Access Service, or CCA Service.

Resource Adequacy (RA): To the extent that the Product can count for RA under CPUC and CAISO rules, PG&E will have the exclusive right to count the DR for RA including local RA. Seller shall cooperate with PG&E to execute all documents necessary to assign RA arising from the Product.

Penalties: Because PG&E relies on DR to meet customer load and manage system emergencies, penalties will be assessed for Seller's failure to perform as required by the Agreement. In such instances, payments to Seller will be reduced and a reduction payment will be due from Seller.

## **B. Pricing**

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Participant's offer shall include an Annual Capacity Price and must be expressed as dollar per kilowatt per year (\$/kW-year). This price will be used to evaluate the cost effectiveness of the offer and be used to determine the Participant's Monthly Capacity Payments.

After shortlisting, Participants may improve the competitiveness of their offer through reduced pricing during the Exclusivity Period described in Section IV below.

## **C. Form of Contract; Exclusivity**

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All offers must include a completed Agreement that reflects all of the terms to which the Participant would agree to be bound and must be consistent with the information included in Participant's Offer Form. Participant may elect to modify the Agreement prior to submitting its offer, but changes to the forms of Agreement should be limited to those necessary to reflect unique characteristics of the offer. Significant modification to the forms of Agreement may result in a failure to obtain an executed Agreement and/or to file an Agreement for CPUC approval when required, due to additional negotiation time, unacceptable terms, or otherwise. Failure of a Participant to provide a completed Agreement may result in disqualification of the Participant's offer. For purposes of evaluating a Participant's offer, in the event of any discrepancy between Participant's mark-up of the form of Agreement and the information provided in Participant's Offer Form, the latter will be deemed controlling.

## **III. Evaluation of Offers:**

To evaluate Offers, PG&E primarily will consider the following factors:

- Cost Effectiveness
- Portfolio-Adjusted Value
- Credit
- Bidders Experience and Performance in DR
- Adherence to Agreement
- Supplier Diversity

Each of the primary factors in evaluation is discussed below.

**Cost Effectiveness** means how an offer's cost compares to an offer's benefits, following the DR Reporting Template and Protocols previously approved by the CPUC. PG&E's analysis of the cost-effectiveness of a bid will include the costs of an offer and additional administrative costs determined by PG&E in its sole discretion. PG&E will assess the cost effectiveness of offers using the DR Reporting Template. An offer not meeting the criteria set forth in Ordering Paragraph fifteen (15) of D.12-04-045 will be rejected.

**Portfolio-Adjusted Value** is intended to represent the value of an offer to PG&E's customers, in the context of PG&E's portfolio. This contrasts with Cost Effectiveness, which is intended to represent the market value of an offer regardless of PG&E's portfolio. To calculate Portfolio-adjusted Value, Cost Effectiveness is adjusted to account for the following elements: an offer's contribution to meeting PG&E's local area Resource Adequacy (RA) requirements; an offer's contribution to managing portfolio congestion risk; an offer's ability to provide operating

flexibility to meet morning and evening ramps, integrate intermittent renewables into the electric grid, and support other bulk power system operating conditions; an offer's contribution to avoiding transmission and distribution system network upgrade costs; and other portfolio benefits and costs that are associated with an offer. Changes in the composition of PG&E's portfolio, market conditions, and regulatory or legislative developments may result in changes to the adjustments and calculations that yield Portfolio-adjusted Value.

**Credit** is a determination by PG&E of each Participant's willingness and ability to comply with the credit and collateral requirements set forth in the Agreement. PG&E's overall credit concentration with each Participant, including its affiliates, will also be taken into consideration and will be based on Participant's completed Credit and Finance Information Form (Attachment E).

**Bidders Experience and Performance in DR** will be evaluated to determine the likely ability of the bidder to meet the commitments in the agreement.

**Adherence to Agreement** is the degree to which a Participant has modified the form of Agreement as part of its offer. An offer that makes few or no material or substantive changes will be evaluated more favorably than an offer that makes such changes. For this reason, Participants are strongly encouraged to price their offers taking into account the form Agreement as it is, meaning minimal or no proposed changes.

**Supplier Diversity** provides procurement opportunities for Women, Minorities, and Service Disabled Veteran-owned business enterprises ("WMDVBE"). PG&E encourages Participants to carry out PG&E's policy and to contribute to PG&E's supplier diversity goal by reaching greater than 30 percent of all procurement with WMDVBEs. The Supplier Diversity evaluation based on Participant's completed Supplier Diversity Questionnaire (Attachment F) will take into account the Participant's status as a WMDVBE, its intent to subcontract with WMDVBEs, and the Participant's own Supplier Diversity Program.

To evaluate the offers in this RFO, PG&E may seek additional information from Participants in these areas or in other matters.

## IV. Participation in the RFO Process

### **Binding and Exclusive Nature of Offer**

By responding to this RFO, each Participant agrees to be bound by all terms, conditions and other provisions of this RFO and any changes or supplements to it that may be issued by PG&E. Each Participant will be required to have an authorized officer of Participant execute the Offer Agreement, which requires that the Participant agrees to be bound by the terms of the RFO and to make specified representations and warranties to PG&E.

A Participant submitting an offer(s) must agree to negotiate exclusively with PG&E regarding the subject of the offer(s) during the Exclusivity Period, which is from the time Participant submits its offer(s) until such time that either PG&E has executed an Agreement with Participant or PG&E has notified Participant that it shall not pursue their offer(s).

## V. Participation Protocols

## **A. Overview**

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All offers must be received by PG&E in electronic form no later than June 22, 2012 at 1:00 P.M. PPT via email to AMPRFO@pge.com and to the IE via email to lkhashimoto@att.net. An acknowledgement of receipt of each offer will be sent by PG&E via return email.

**Electronic Documents:** The electronic documents must be in a Microsoft Word, Excel, and/or PDF file as specified below in Section V.B. The Participant should not provide documents in other electronic formats or versions.

**Telephonic, telegraphic, hardcopy, or facsimile transmission of an offer is not acceptable.**

## **B. Required Information**

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A Participant desiring to offer multiple Product Types must submit a separate, discrete offer for each Product Type. Participant shall format each offer so that each file corresponds to an Attachment item noted below. For Participants submitting large files, PG&E recommends submitting zip files or multiple emails with separate attachments corresponding to the Attachment item below to ensure that all files are received. PG&E reserves the right to request copies of documents listed in a Participant's offer(s) but not already included in electronic copies received. Participants may submit multiple offers.

The following documents, which are located in the Appendices, must be included in any offer:

### **Attachment A: Offer Form (Format: MS Excel):**

A completed Offer Form (Attachment A) providing key details of the Participant's offer. Offers will include Product Type, the Annual Capacity Price (\$/kW-year), and the Portfolio Size.

### **Attachment B: Offer Agreement (Format: MS Word and PDF):**

A signed Offer Agreement (Attachment B), attesting to Participant's agreement to be bound by the conditions of the RFO.

### **Attachment C: RFO Confidentiality Agreement (Format: MS Word and PDF):**

A signed RFO Confidentiality Agreement (Attachment C) whereby Participant agrees to keep confidential the terms discussed during the course of this RFO and during any period of Agreement negotiation.

### **Attachment D: Demand Response Purchase Agreement (Format: MS Word):**

A completed Agreement (Attachment D). Modifications should be made in underline/strikeout formatting to show additions and deletions. Requested modifications to one of the forms of Agreement will be considered part of the Participant's offer; that is, PG&E will assume that the Participant is willing to execute an Agreement based on the offered terms.

**Attachment E: Credit and Finance Information (Format: MS Word):**

Comprehensive information for the assessment of the financial viability of Participant. Financial information must be provided for the Participant and any entity providing credit enhancement to the Participant. As necessary, please specify whether the information provided is for the Participant, its parent or an entity providing on Participant's behalf, security, under any of the provisions of the Protocol.

**Attachment F: Supplier Diversity Questionnaire (Format: MS Word):**

A completed Supplier Diversity Questionnaire. The selected Participant(s) is expected to report payments made to WMDVBEs upon request but no less than annually. The required Exhibit 1-A form is included for reference.

**Attachment G: Seller's Experience with Demand Response (Format: MS Word):**

A completed Form describing the Participant's experience and performance in DR, including but is not limited to, the number of years participating in DR programs, commitment size (MW) and duration, performance (i.e., how often commitment was or was not met), experience in California, and any outstanding financial obligations in any of PG&E's programs.

## **VI. Communications:**

PG&E has established a website that can be linked from [www.pge.com/rfo](http://www.pge.com/rfo) where Participants may register and where all AMP RFO documents, information, announcements and questions and answers are posted and available to Participants.

To promote accuracy and consistency of the information provided to all Participants, PG&E strongly prefers that all communications take the form of an e-mail directed to both [AMPRFO@pge.com](mailto:AMPRFO@pge.com) and the IE at [lhashimoto@att.net](mailto:lhashimoto@att.net). After reading the RFO Protocols, Participants are encouraged to submit questions to this email address by May 30, 2012, 5:00 P.M. PPT that they would like answered at the Participants' Webinar on June 6, 2012. For questions received after June 6, 2012 and with respect to matters of general interest raised by any Participant, PG&E may, without reference to the specific Participant raising such matter or initiating the inquiry, post responses on its website. PG&E may, in its sole discretion, decline to respond to any email or other inquiry without liability or responsibility.

PG&E may elect to respond to inquiries or comments by individual Participants concerning purely procedural or administrative matters, but may also decline to do so in its sole discretion without liability or responsibility.

## **VII. Credit and Collateral:**

In its evaluation of an offer, PG&E will consider the Participant's willingness and ability to comply with the credit and collateral requirement as set forth in the Agreement. PG&E's overall credit concentrations with each Participant, including its affiliates, will also be taken into consideration.

Participant should expect to post Performance Assurance or collateral equal to 20% of maximum annual capacity payments based upon the Participant's commitment levels for 2013 and 2014. Collateral should be in the form of cash, Letter of Credit, and/or Guaranty as defined in the Agreement.

Please see the Agreement for more details on the Performance Assurance requirements.

### **VIII. Confidentiality:**

Except with PG&E's prior written consent, no Participant shall disclose its participation or its offer in this RFO (other than by attendance at any meeting held by PG&E with respect to the RFO, if any) or collaborate on, or discuss with any other Participant or potential Participant: (1) offer strategies, (2) the substance of any offer(s), including without limitation the price or any other terms or conditions of any offer(s), or (3) the shortlist status of any offer(s).

All information and documents in Participant's offer that are clearly identified and marked by Participant as "Proprietary and Confidential" on each page on which confidential information appears shall be considered confidential information. PG&E shall not disclose such information and documents to any third parties except for PG&E's employees, agents, counsel, accountants, advisors, or contractors who have a need to know such information and have agreed to keep such information confidential, except as provided below in this Section VIII.

Notwithstanding the foregoing, it is expressly contemplated that the information and documents submitted by Participant in connection with this RFO may be provided to the CPUC, its staff, and the Procurement Review Group ("PRG"), established pursuant to Decision 02-08-071, or the IE assigned to this RFO, for their review. PG&E retains the right to disclose any information or documents provided by Participant to the CPUC, CEC, PRG, the IE and to any other entity in order to comply with any applicable law, regulation, or any exchange, control area or California Independent System Operator Corporation rule, or order issued by a court or entity with competent jurisdiction over PG&E at any time even in the absence of a protective order, confidentiality agreement or nondisclosure agreement, as the case may be, without notification to Participant and without liability or any responsibility of PG&E to Participant. PG&E cannot, however, ensure that the CPUC will afford confidential treatment to Participant's confidential information, or that confidentiality agreements or orders will be obtained from and/or honored by the CPUC, CEC, or PRG.

Participant must execute a RFO Confidentiality Agreement in the form attached as Attachment C and deliver such RFO Confidentiality Agreement to PG&E with its offer.

### **IX. Negotiation and Execution of Agreement**

By submitting an offer, Participant agrees, if its offer is selected, to negotiate and execute a Agreement consistent with the Agreement submitted with the Participant's offer and containing such other terms and conditions as may be mutually acceptable to PG&E and the Participant.

### **X. Regulatory Approval**

The effectiveness of the Agreement is conditioned upon PG&E's receipt of CPUC Approval of the Agreement and of PG&E's right to recover in rates all payments made under such Agreement.

## **XI. Participant's Waiver of Claims and Limitations of Remedies**

Except as expressly set forth in this RFO, by submitting an offer, the Participant knowingly and voluntarily waives any rights under statute, regulation, state or federal constitution, or common law to assert any claim or complaint or other challenge in any regulatory, judicial or other forum, except as expressly provided below, concerning or related in any way to the RFO and/or any Appendices to the RFO ("Waived Claims"). Except as provided below, the assertion of any Waived Claims by Participant in any regulatory, judicial, or other forum shall, to the extent that Participant's offer has not already been disqualified, provide PG&E the right, and may result in PG&E electing to reject such offer or terminate the RFO.

By submitting an offer, the Participant further agrees that the sole forum in which Participant may assert any challenge with respect to the conduct or results of the RFO is the CPUC. The Participant further agrees that the sole means of challenging the conduct or results of the RFO is a protest to PG&E's filing before the CPUC seeking approval of one or more Agreements entered into as a result of the RFO, or, if no such filing is required, by a complaint before the CPUC. The Participant further agrees that the sole basis for any such protest or complaint shall be a challenge to the conduct or results of the RFO on the ground that PG&E failed in a material respect to conduct the RFO in accordance with the RFO rules and procedures outlined in this document, and the exclusive remedy available to the Participant in the case of such a protest shall be an order of the CPUC that PG&E again conduct any portion of the RFO that the CPUC determines was not previously conducted in accordance with the RFO rules and procedures outlined in this document. The Participant 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 PG&E elects to do otherwise in its sole discretion, during the pendency of such a protest or complaint the RFO and any related regulatory proceedings related to the RFO will continue as if the protest or complaint had not been filed, unless the CPUC has issued an order suspending the RFO or PG&E has elected to terminate the RFO.

The Participant agrees to indemnify and hold PG&E harmless from any and all claims by any other Participant asserted in response to the assertion of a Waived Claim by the Participant or as a result of the Participant's protest to or complaint regarding the RFO. Except as expressly provided in the RFO, nothing herein, including Participant's waiver of the Waived Claims as set forth above, shall in any way limit or otherwise affect the rights and remedies of PG&E.

## **XII. Termination of the RFO and Related Matters**

PG&E reserves the right at any time, in its sole discretion, to terminate the RFO for any reason whatsoever without prior notification to Participants and without liability of any kind to PG&E or anyone acting on PG&E's behalf. Without limitation, grounds for termination of the RFO may include the assertion of any Waived Claims by a Participant or a determination by PG&E that, following evaluation of the offers, there are no offers that provide adequate customer benefit.

PG&E reserves the right to change the offer evaluation criteria and the terms and conditions of the form of Agreement for any reason, to terminate further participation in this process by any Participant, to accept any offer or to enter into any Agreement, to evaluate the qualifications of any Participant, and to reject any or all offers, all without notice and without assigning any reasons and without liability to PG&E or anyone acting on PG&E's behalf.

Unless earlier concluded, the RFO will terminate automatically upon the execution of one or more Agreements by selected Participants as described herein.

### **XIII. Participant's Representations and Warranties**

Each Participant submitting an offer shall execute and provide an Offer Agreement attached as Attachment B, under which Participant must, among other things, agree to be bound by the conditions of the RFO in submitting its offer and making the representations and warranties set forth therein. Please review this agreement carefully.

BREACH BY ANY PARTICIPANT OF THE REPRESENTATIONS AND WARRANTIES IN ATTACHMENT B OF THE RFO APPENDICES IS, IN ADDITION TO ANY OTHER REMEDIES THAT MAY BE AVAILABLE TO PG&E UNDER APPLICABLE LAW, GROUNDS FOR IMMEDIATE DISQUALIFICATION OF SUCH PARTICIPANT FROM PARTICIPATION IN THE RFO AND, DEPENDING ON THE NATURE OR SEVERITY OF THE BREACH, MAY ALSO BE GROUNDS FOR TERMINATING THE RFO IN ITS ENTIRETY.