



# **Demand Response Auction Mechanism (DRAM) Request for Offers Solicitation Protocol**

**Issuance Date: March 3, 2016**

## Table of Contents

<b>I. OVERVIEW .....</b>	<b>1</b>
A. OVERVIEW .....	1
B. DRAM RFO WEBSITE AND COMMUNICATION .....	1
C. SCHEDULE.....	2
D. EVENTS IN THE RFO SCHEDULE.....	2
E. DISCLAIMERS FOR REJECTING OFFERS AND/OR TERMINATING THIS RFO .....	3
<b>II. RFO GOALS.....</b>	<b>4</b>
<b>III. ELIGIBILITY .....</b>	<b>4</b>
A. ELIGIBILITY OF CUSTOMERS IN EXISTING PG&E DR PROGRAMS .....	4
B. ELECTRIC RULE 24.....	4
C. DRAM OFFER REQUIREMENTS AND ACCEPTANCE LIMITATIONS.....	7
D. PURCHASE AGREEMENT (PA) TERMS.....	8
<b>IV. EVALUATION CRITERIA.....</b>	<b>8</b>
A. QUANTITATIVE ASSESSMENT .....	8
B. QUALITATIVE ASSESSMENT .....	9
<b>V. REQUIRED INFORMATION.....</b>	<b>10</b>
A. SUBMISSION OVERVIEW .....	10
B. REQUIRED FORMS .....	11
<b>VI. CONFIDENTIALITY .....</b>	<b>12</b>
<b>VII. PROCUREMENT REVIEW GROUP REVIEW.....</b>	<b>13</b>
<b>VIII. REGULATORY APPROVAL .....</b>	<b>13</b>
<b>IX. DISPUTE RESOLUTION .....</b>	<b>13</b>
<b>X. TERMINATION OF THE RFO-RELATED MATTERS .....</b>	<b>14</b>
<b>XI. BIDDER’S REPRESENTATIONS AND WARRANTIES.....</b>	<b>14</b>

## LIST OF ATTACHMENTS

Attachment A: Offer Form

Attachment B: Corporate Structure and Financials

Attachment C: Standard Purchase Agreement

## I. Overview

### A. Overview

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Pacific Gas and Electric Company (“PG&E”) is issuing this 2017 Demand Response Auction Mechanism (“DRAM”) Request for Offers (“RFO”) (collectively, the “2017 DRAM RFO”) to enable phase two of the two-phase DRAM pilot, pursuant to the California Public Utility Commission (“CPUC”) Decision (“D.”) 14-12-024. This DRAM RFO is intended to solicit offers (“Offers”) from participants (“Participants” or “Bidders”) to provide resource adequacy (“RA”) capacity (“Product”) to the three Investor Owned Utilities (“IOUs”) under a standard form, non-negotiable purchase agreement (“PA”). This document (the “Solicitation Protocol”) describes the process by which PG&E seeks, evaluates, and accepts Bidder’s Offers from winning Bidders (“Sellers”) who bid Proxy Demand Resource (“PDR”) or Reliability Demand Response Resource (“RDRR”) in the California Independent System Operator (“CAISO”) wholesale market.

The 2017 DRAM RFO is governed by CPUC Resolution E-4754 and CPUC’s disposition to PG&E’s Advice Letter 4719-E-A.

Subject to Offer pricing and other factors identified in this Solicitation Protocol, PG&E seeks to purchase a target of 10 megawatts (“MWs”) of Product within its service territory.

All purchases will be made according to the terms and conditions set forth in the PA. This Solicitation Protocol sets forth the procedures a Bidder must follow in order to participate in the RFO. Capitalized terms used in this Solicitation Protocol, but not otherwise defined herein, have the meanings set forth in the PA.

### B. DRAM RFO Website and Communication

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PG&E has established the 2017 DRAM RFO website at [www.pge.com/dram](http://www.pge.com/dram), where Bidders register and where all the RFO documents, information, announcements and questions and answers are posted and available to Bidders.

To promote accuracy and consistency of the information provided to all Bidders, PG&E encourages Bidders to submit any inquiries via e-mail to [DRAMRFO@pge.com](mailto:DRAMRFO@pge.com) for matters related to DRAM procurement. With respect to matters of general interest raised by any Bidder, PG&E may, without reference to the specific Bidder raising such matter or initiating the inquiry, post the questions and responses on its website. PG&E may, in its sole discretion, decline to respond to any email or other inquiry.

Any exchange of material information regarding this RFO between Bidder and PG&E must be submitted to both PG&E and the Independent Evaluator (“IE”), Wayne Oliver of Merrimack Energy Group, at [waynejoliver26@gmail.com](mailto:waynejoliver26@gmail.com). The IE is an independent, third party evaluator who is required by CPUC D. 14-12-024 to ensure this RFO is

conducted in a reasonable and neutral manner.

### C. Schedule

The final RFO schedule is subject to change to conform to any CPUC requirements but otherwise is at the discretion of PG&E. PG&E will post any schedule change on PG&E's 2017 DRAM RFO website. Also, as further described below, Bidders may register at PG&E's RFO website to receive notice of these and other RFO changes by electronic mail. PG&E will have no liability or responsibility to any Bidder for any change in the schedule or for failing to provide notice of any change.

The expected schedule for this RFO is (all times are in Pacific Prevailing Time ["PPT"]):

**Table 1: 2017 DRAM RFO Schedule of Events**

Date/Time	Event
Ongoing	Bidders may register online at PG&E's DRAM RFO website to receive notices regarding the RFO.
March 3, 2016	PG&E issues the RFO.
March 15, 2016 10 AM	IOUs hold a joint Bidders' Webinar on the 2017 DRAM RFO.
April 18 <del>4</del> , 2016 1:00 PM	Offers Due. Offer(s) must be submitted to the online platform at Power Advocate.
April 25 <del>7</del> , 2016	PG&E notifies non-conforming Bidders (request to "cure").
<del>May</del> April 12, 2016	Bidder cure period ends.
<del>June 24</del> May 6, 2016	Notice to bidders of selection and send final PA for execution.
<del>July 8</del> May 23, 2016	Deadline to submit signed PAs to PG&E.
<del>July 22</del> June 10, 2016	Advice Letter Filing for executed PAs.
August 26 <del>9</del> , 2016	Energy Division gives notice of approval or other action.

### D. Events in the RFO Schedule

- a. Registration. Bidders may register online to receive announcements and updates about this RFO through the <https://www.surveymonkey.com/r/DRAMregistration>.
- b. Issuance. PG&E will issue the 2017 DRAM RFO and post the Solicitation Protocol, form of PA, and all other RFO materials on the DRAM RFO website.
- c. Bidders' Webinar. PG&E, SCE and SDG&E will hold a Bidders' Webinar to review key Solicitation Protocol and PA items related to this RFO. Information on how to attend the conference will be made available on the RFO website and to those who register on the RFO website shown above.
- d. Offers Due. Bidder's Offer must be submitted via Power Advocate and must include all of the documents described in Section V, Required Information. By submitting an Offer and responding to this RFO, the Bidder agrees to be bound by

all of the terms, conditions and other provisions of this RFO and any changes or supplements to it that may be issued by PG&E.

- e. Cure Period. At PG&E's sole discretion, PG&E may allow Bidder to cure any deficiencies contained in its Offer submittal. A Bidder's cure shall be limited only to those areas or issues which PG&E designates as eligible to be cured. If such cure is allowed, the deficiency must be cured prior to the ~~April 12~~May 2, 2016 deadline.
- f. PG&E Selects Offers. Bidders whose Offers have been selected ("Selected Offers") will be notified via email. PG&E will select Offers according to the evaluation criteria described in Section IV, Evaluation Criteria. Offers beyond the Selected Offers may be placed on a waitlist to be selected in order of evaluation results and selection constraints, should any Selected Offers fail to complete the RFO process.
- g. Preparation of PA. PG&E will prepare a final version of the PA corresponding to each Selected Offer, completing information specific to the Selected Offer, and will then send the PA to Bidder of the Selected Offer for completion and signature in accordance with the directions found in Section V, Required Information.
- h. Signed PA Due. Unless instructed otherwise by PG&E, ~~July 8~~May 23, 2016 is the last day for selected Bidders to submit the signed PA to PG&E, or to notify PG&E if Bidder elects not to execute the PA. Bidders are encouraged to return the executed PAs to PG&E several days prior to this date, in case PG&E finds that corrections need to be made.
- i. Execution and Regulatory Approval. Once PG&E fully executes each of the PAs, if any, resulting from this RFO, PG&E will submit all such PAs to the CPUC for approval via a Tier 1 advice letter filing for approval. Additional regulatory approval information is provided in Section VIII, Regulatory Approval.

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

This RFO does not constitute an offer to buy and creates no obligation to execute any PA or to enter into a transaction under a PA 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 and reserves the right to request information at any time during the solicitation process.

PG&E retains the discretion, subject to, if applicable, the approval of the CPUC, to: (a) reject any Offer for any reason, including but not limited to the basis that an Offer is the result of market manipulation or is not cost competitive or any other applicable reason; (b) modify this RFO and the form PA as it deems appropriate to implement the RFO and to comply with applicable law or other decisions or direction provided by the CPUC; and (c) terminate the RFO should the CPUC not authorize PG&E to purchase 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 if such suspension is required by or with the approval of the CPUC. PG&E will not be liable in any way, by reason of such withdrawal, rejection, suspension, termination or any other action described in this Solicitation Protocol to any Bidder, whether submitting an Offer or not.

## II. RFO Goals

PG&E is seeking to procure at least 10 MW total of System, Local, and Flexible RA Product in this RFO, as measured during the month of August 2017. At least 2 MW of the total shall be attributed to a Residential Customer Product.

As noted in Section I, Overview, a Bidder can submit an Offer for Product into this RFO as either: (1) a PDR that is offered into both the Day-Ahead (“DA”) and Real-Time (“RT”) markets (as those terms are defined in the CAISO Tariff); or (2) an RDRR that is offered in the RT market for dispatch only under emergency conditions, but that also may be offered in the DA market.

## III. Eligibility

### A. Eligibility of Customers in Existing PG&E DR Programs

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Participation in the DRAM or any CAISO market product is precluded if a customer comprising a Bidder’s PDR or RDRR is also enrolled in a PG&E DR program. To help enable these customers to participate in DRAM, the DRAM public working group developed “set aside” (to encourage or make available) measures. The goal of these measures is to:

- Remove existing un-enrollment limitations from tariffed DR programs (e.g., Aggregator Managed Portfolio [AMP], SmartAC), to enable participants to leave these programs out of sync with the de-enrollment schedule, in order to participate in DRAM.
- Allow reductions to AMP contract capacity, for those DR aggregators that have AMP contracts for the same months that they are bidding capacity under DRAM.
- Create a minimum participation target for residential customers.

These set-aside measures are detailed in the “DRAM Set-Asides” document on the DRAM RFO website.

### B. Electric Rule 24

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[Electric Rule 24](#) (“Rule 24”) governs how PG&E interacts with 3rd party Demand Response Providers (“DRPs”). The DRAM pilot is subject to the provisions of Rule 24, and any limitations authorized by the CPUC relative to its implementation, except the

DRAM is a PG&E Demand Response (DR) program and will be administered by PG&E's DR organization.

Some of the Rule 24 requirements that DRPs must satisfy before they can provide DR Services in PG&E's territory include:

- Complete a Customer Information Service Request for Demand Response Providers (CISR-DRP) form (Form 79-1152), available on the DRAM website, Through the CISR-DRP, customers authorize the release of their personally identifiable PG&E account and electricity usage information to up to two third-party DRPs.
- Complete PG&E's Demand Response Provider Service Agreement – Form 79-1160 (required only if the DRP will be serving PG&E bundled customers).
- Register with the CPUC and maintain a valid DRP registration at the CPUC.
- Provide the CPUC a performance bond under the name of the CPUC as a security deposit or financial guarantee bond in the amount indicated in Rule 24, for PG&E's residential and small commercial customers that the DRPs register.
- Execute necessary service agreements for registering resources with the CAISO.
- Meet all CAISO requirements for the DRP and maintain their registration as a qualified DRP.

For a full list of requirements, refer to the Electric Rule 24 that is hyperlinked above and available on the DRAM website.

### C. Eligible Product Types

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PG&E will accept System, Local, and Flexible Capacity Products in the 2017 DRAM RFO.

System Capacity Product must bid into the Day Ahead market during the "Availability Assessment Hours." Per CAISO's Fifth Replacement Tariff<sup>1</sup>, the "Availability Assessment Hours" are determined annually in its Business Practice Manual. System Capacity Product may be bid as either PDR or RDRR.

Local Capacity Product must be specific to one of the seven Local Capacity Areas (LCAs) in PG&E's service territory<sup>2</sup>, and all customers must be located in the LCA that they are providing Local Capacity for. Local Capacity Product may be bid as either PDR or RDRR.

Flexible Capacity Product may be Category 2 (peak ramping) or Category 3 (super-peak ramping), and must meet the Flexible Capacity required bidding hours specified in the

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<sup>1</sup> CAISO, Fifth Replacement FERC Tariff, June 12, 2015, [http://www.caiso.com/Documents/ConformedTariff\\_Jun12\\_2015.pdf](http://www.caiso.com/Documents/ConformedTariff_Jun12_2015.pdf)

<sup>2</sup> A list of PG&E LCAs and their substations is provided in Exhibit F of the PA, and a link to PG&E's electric system map which includes substation locations is available on the DRAM website.



most recent CAISO Business Practice Manual<sup>3</sup>. Flexible Capacity Product must be bid as a PDR, and must be able to participate in both the DA and RT markets.

A list of Products that may be bid into the 2017 DRAM RFO include:

**Table 2: Eligible Products for the 2017 DRAM RFO**

	<b>Product</b>	<b>LCA</b>
<input type="checkbox"/>	Product A: System Capacity	Not applicable
<input type="checkbox"/>	Product B1: Local Capacity with System Capacity	Greater Bay
<input type="checkbox"/>	Product B2: Local Capacity with System Capacity	Humboldt
<input type="checkbox"/>	Product B3: Local Capacity with System Capacity	North Coast/North Bay
<input type="checkbox"/>	Product B4: Local Capacity with System Capacity	Sierra
<input type="checkbox"/>	Product B5: Local Capacity with System Capacity	Stockton
<input type="checkbox"/>	Product B6: Local Capacity with System Capacity	Fresno
<input type="checkbox"/>	Product B7: Local Capacity with System Capacity	Kern
<input type="checkbox"/>	Product C2-0: Flexible Capacity (Flexible Category 2) with System Capacity	Not applicable
<input type="checkbox"/>	Product C3-0: Flexible Capacity (Flexible Category 3) with System Capacity	Not applicable
<input type="checkbox"/>	Product D2-1: Flexible Capacity (Flexible Category 2) with Local and System Capacity	Greater Bay
<input type="checkbox"/>	Product D2-2: Flexible Capacity (Flexible Category 2) with Local and System Capacity	Humboldt
<input type="checkbox"/>	Product D2-3: Flexible Capacity (Flexible Category 2) with Local and System Capacity	North Coast/North Bay
<input type="checkbox"/>	Product D2-4: Flexible Capacity (Flexible Category 2) with Local and System Capacity	Sierra
<input type="checkbox"/>	Product D2-5: Flexible Capacity (Flexible Category 2) with Local and System Capacity	Stockton
<input type="checkbox"/>	Product D2-6: Flexible Capacity (Flexible Category 2) with Local and System Capacity	Fresno
<input type="checkbox"/>	Product D2-7: Flexible Capacity (Flexible Category 2) with Local and System Capacity	Kern

<sup>3</sup> The most recent version of the Business Practice Manual as of this Protocol's publishing date, is: <https://bpmcm.caiso.com/Pages/BPMDetails.aspx?BPM=Reliability%20Requirements>. However, CAISO may annually update the required bidding hours. PG&E encourages Bidders to ensure they are using the most current Business Practice Manual.

	Product	LCA
<input type="checkbox"/>	Product D3-1: Flexible Capacity (Flexible Category 3) with Local and System Capacity	Greater Bay
<input type="checkbox"/>	Product D3-2: Flexible Capacity (Flexible Category 3) with Local and System Capacity	Humboldt
<input type="checkbox"/>	Product D3-3: Flexible Capacity (Flexible Category 3) with Local and System Capacity	North Coast/North Bay
<input type="checkbox"/>	Product D3-4: Flexible Capacity (Flexible Category 3) with Local and System Capacity	Sierra
<input type="checkbox"/>	Product D3-5: Flexible Capacity (Flexible Category 3) with Local and System Capacity	Stockton
<input type="checkbox"/>	Product D3-6: Flexible Capacity (Flexible Category 3) with Local and System Capacity	Fresno
<input type="checkbox"/>	Product D3-7: Flexible Capacity (Flexible Category 3) with Local and System Capacity	Kern

#### **D. Offer Requirements and Acceptance Limitations**

1. In order to participate in the CAISO Market, each CAISO resource must be: (1) at least 100 kW per PDR, and at least 500 kW per RDRR; (2) composed of retail customers within PG&E's service territory; and (3) within the same CAISO Sub Load Aggregation Point (SubLap), as that term is defined in the CAISO Tariff<sup>4</sup>.
2. Each Bidder's Offer must include Product for August 2017.
3. A single Offer may consist of multiple PDRs and RDRRs.
4. Each Bidder's Offer may contain a portfolio of Product types. For example, one Bidder's Offer may comprise 5 MW of System RA as well as 2 MW of Local RA, using a unique customer set for each of these Products.
5. A maximum of 20 Offers may be accepted per Bidder. All Offers should be provided on a single Excel Offer form.
6. PG&E will presume all Bidders' Offers are independent of each other, unless otherwise specified in the Offer Form.
7. Offers may be for Residential Customer or Non-residential Customer Products, and must be identified as such in the Offer Form. A Residential Product is that which is defined in the CPUC Resolution E-4728 as: "a minimum of 90% of customers on

<sup>4</sup> CAISO Tariff: [http://www.caiso.com/Documents/ConformedTariff\\_Jun12\\_2015.pdf](http://www.caiso.com/Documents/ConformedTariff_Jun12_2015.pdf)

- residential tariffs and no more than 10 percent of customers on small commercial tariffs.”
8. PG&E acceptance of Offers may be limited by the number of service agreements available for Sellers’ DR resource(s).<sup>5</sup>
  9. PG&E acceptance of Offers may be subject to the CPUC budget limitations.

#### **E. Purchase Agreement (PA) Terms**

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1. The Delivery Period(s) will be no earlier than January 1, 2017 and no later than December 31, 2017.
2. The Bidder must submit its Offer, via the Attachment A, Offer Form, with a Monthly Quantity (Capacity kW) and Contract Price (\$/kW) for each applicable Showing Month (January – December 2017). If the Bidder does not wish to offer Product during a particular month, it should include a zero for that month in their Offer Form. Bidder must designate in the Offer Form how much of the total Contract Price is attributable to Scheduling Coordinator (“SC”) costs.
3. If a Seller does not have a credit rating by S&P or Moody’s, or its credit rating is below BBB- from S&P and Baa3 from Moody’s if rated by both S&P and Moody’s, Seller shall provide and maintain collateral with PG&E per the terms of the PA.
4. The PA is a non-negotiable form agreement.

### **IV. Evaluation Criteria**

PG&E will evaluate conforming Offers using the evaluation criteria outlined below.

#### **A. Quantitative Evaluation**

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For the 2017 DRAM RFO, PG&E will calculate a net market value of the RA capacity associated with each Offer in its evaluation. Net market value is equal to an Offer’s benefits minus its costs.

An Offer’s benefits are based on the forecast market value of each type of Product in the Offer, e.g., System Capacity, Local Capacity, and/or Flexible Capacity.

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<sup>5</sup> See PG&E’s Petition for Modification filed January 28, 2016, which seeks to shift funds remaining from the \$4 million allotted to the 2016 DRAM and \$6 million allotted to the 2017 DRAM to: 1) expand Rule 24 registrations and an associated increase in CISR-DRPs beyond the 10,000 agreed upon in the Rule 24 Initial Implementation step; 2) modify PG&E’s business processes and systems for Rule 24 implementation to function with the 2016 CAISO enhancements to its DRRS system; and 3) fund residential meter reprogramming to 15 minute intervals, if the Commission rules that over-the-air meter programming should be provided to residential customers at no cost.

An Offer’s cost is determined by multiplying (a) the Offer’s volume per Product per month by (b) the Offer’s price per Product per month, then adding all of these monthly values together, and finally adding the SC cost.

Subsequently, Offers will be ranked by net market value per unit—in units of \$/kW-year<sup>6</sup>—from highest to lowest. A net market value per unit is calculated using total net market value in dollars for the numerator, and weighted average monthly volume in kilowatts for the denominator.<sup>7</sup>

An individual Offer can contain multiple types of Products on multiple rows in the Offer Form. Although PG&E does not require additional Local or Flexible Capacity for its portfolio in 2017, PG&E will consider such Products in the 2017 DRAM RFO.

The result of the quantitative analysis is a merit-order ranking of all complete and conforming Offers, based on their net market value per unit. Illustrative formulas are provided below.

Benefits = Sum of (Offered Volume<sub>P</sub> x Product Value<sub>P</sub>) where P is each Product

Costs = Offered Volume<sub>P</sub> x Offered Pricing<sub>P</sub> + SC Cost, where P is each Product

Net Market Value = Benefits – Costs

Net Market Value per Unit in \$/kW-year = Net Market Value in Dollars divided by Weighted Average Monthly Volume in kilowatts

**B. Qualitative Evaluation**

For the 2017 DRAM RFO, PG&E will apply a qualitative adjustment factor only for the Diverse Business Enterprise criteria listed in the following table. The table shows the joint IOU DRAM scoring matrix for qualitative assessment. To implement the qualitative assessment of an Offer, a “Qualitative Adjustment Factor” will be added to the net market value per unit before re-ranking the Offers.

**Table 3: Qualitative Evaluation Scoring Matrix**

	Answer	Score		Weight	Weighted Score
		Yes	No	PG&E	(Score x Weight)
<b>Criteria</b>					
Have you participated in a demand response program or demand response market anywhere as an aggregator?	Yes/No	1	0	0%	

<sup>6</sup> Discounted to present value.

<sup>7</sup> This ranking method is the consensus of the three IOUs’s. Note that this consensus method differs in an unsubstantive way from the unilateral ranking method PG&E had proposed in its advice letter.

	Answer	Score		Weight	Weighted Score
		Yes	No	PG&E	(Score x Weight)
Will your DRAM Resource require any permits, interconnection agreements, environmental studies, or additional land rights prior to operation?	Yes/No	0	1	0%	
Is there any ongoing investigation or an investigation that has occurred within the last five years with respect to any alleged violation of any rule, regulation, or law associated with any commodity, securities, environmental, or financial market regarding any DR services you were/are providing?	Yes/No	0	1	0%	
<b>Diverse Business Enterprise (DBE)</b>					
Do you have, or will you obtain before the program begins, DBE* status?	Yes/No	1	0	1%	
<b>Project Diversity</b>					
Are you going to use Enabling Technology** with at least 90% of the customers comprising your PDR customers?	Yes/No	1	0	0%	

\*A DBE means Women, Minority, Disabled Veteran (WMDV) and Lesbian, Gay, Bisexual and Transgender (LGBT) Business Enterprises as defined in CPUC General Order 156.

\*\* Enabling Technology means a set of communications, networking, telemetry, control and other systems that enable a DR end-use to provide grid service.

## V. Required Information

### A. Submission Overview

All Offer submittal information pertaining to this RFO will be hosted on the Power Advocate site. Telephonic, hardcopy or facsimile transmission of an Offer is not acceptable. In order to participate in this RFO, Bidders must register and be accepted through Power Advocate at the Public Registration Link:

<https://www.poweradvocate.com/pR.do?okey=56801&pubEvent=true>

Event Name: 56801 : 2017 DRAM

PG&E strongly encourages Bidders to register with Power Advocate well before Offers are due. Detailed instructions for submitting Offer(s) and using Power Advocate are on PG&E’s DRAM website.

**Electronic Documents:** The electronic documents for the attachments must be in a Microsoft Word, Excel file or Adobe Acrobat PDF file as applicable. For each document, please include the Bidder’s company name in each file name.

## **B. Required Forms**

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### **1. Offer Package**

The following documents, which are on the DRAM RFO website, must be completed and included with each Offer:

- a. Offer Form (Attachment A) - Bidder must provide all applicable information requested in the form and all inputs must match the respective information provided in other required documentation.
- b. Corporate Structure information (Attachment B).
- c. Financial reports – Bidder shall provide PG&E with its audited financial reports for the most recent three fiscal years, if available. If the Bidder does not provide this information and its financial reports are not publicly available electronically on the Securities and Exchange Commission’s website, then the Bidder will be considered as having no financials.

### **2. Post-Shortlist Documents (if applicable)**

If the Bidder is notified via an emailed letter that they are eligible for PG&E’s Shortlist (“Shortlist Letter”), then they must complete the following documents:

- a. Signed Shortlist Letter – Bidder must return a signed Shortlist Letter to PG&E, accepting the terms set forth in the Letter and agreeing to continued participation of their shortlisted Offers in the 2017 DRAM RFO.
- b. Complete and signed Purchase Agreement – PG&E will send the PA to Bidder for the Selected Offers as an electronic Word file. The Bidder shall fill in the contact information, and ensure that the Bidder’s name, Product amounts, types, prices and and monthly SC costs correctly reflect the Selected Offer. The PA shall be saved as a Word document. Bidder shall then sign the PA with at least two original signatures, and send the electronic Word file corresponding to the executed PA to PG&E along with two hard copies containing Seller’s two original signature pages. PG&E will then verify the Word document, and when acceptable, countersign the PA, and return one fully executed original to Bidder by mail.

In lieu of an original signature, PG&E will also accept a signature using Docusign, Adobe eSign, or other similar electronic signature mechanism. If an electronic signature page is used, then Bidder shall provide both a .pdf file with the electronic signature AND the Word file corresponding to PG&E.

If the Bidder is submitting original signatures to the PA, then the executed PAs must be sent to PG&E by overnight delivery to the address shown below.

Pacific Gas and Electric Company  
DRAM RFO  
Attn: Dana Ostfeld  
245 Market St, 3rd Floor  
Mail Code N3F  
San Francisco, CA 94105

## VI. Confidentiality

After contract execution, PG&E is required to submit executed PAs to the CPUC for approval via a Tier 1 advice letter filing.

No Bidder shall collaborate on or discuss with any other Bidder or potential Bidder Offer strategies, the substance of any Offer(s), including without limitation the price or any other terms or conditions of any Offer(s), or whether PG&E has Selected Offers or not.

All information and documents in Bidder's Offer that have been clearly identified and marked by Bidder as "Proprietary and Confidential" on each page on which confidential information appears shall be considered confidential information. PG&E shall not disclose such confidential 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 and except as provided otherwise in this section. In addition, Bidder's Offer will be disclosed to the IE.

Notwithstanding the foregoing, it is expressly contemplated that the information and documents submitted by Bidder in connection with this RFO, including Bidder's confidential information, may be provided to the CPUC, its staff, and the Procurement Review Group ("PRG"), established pursuant to D. 02-08-071. PG&E retains the right to disclose any information or documents provided by Bidder to the CPUC, the PRG, the California Energy Commission ("CEC") and to any other entity in connection with PG&E's tier 1 advice letter filing or in order to comply with any applicable law, regulation, or any exchange, control area or CAISO 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 Bidder and without liability or any responsibility of PG&E to Bidder. PG&E cannot ensure that the CPUC will afford confidential treatment to Bidder's confidential information, or that confidentiality agreement or orders will be obtained from and/or honored by the PRG, the CEC, or the CPUC. By submitting an Offer, Bidder agrees to adhere and be bound by the confidentiality provisions described in this section.

The treatment of confidential information described above shall continue to apply to information related to Selected Offers which are formalized through execution of a PA.

## VII. Procurement Review Group Review

Following completion of the evaluation and rankings of Offers, PG&E will submit the results of the evaluation and its recommendations to its PRG members. PG&E will consider any alternative recommendations proposed by the PRG. PG&E, in its sole discretion, shall determine whether any alternatives proposed by the PRG should be adopted. PG&E has no obligation to obtain the concurrence of the PRG with respect to any Offer.

PG&E assumes no responsibility for the actions of the PRG, including actions that may delay or otherwise affect the schedule for this Solicitation, including the timing of the selection of Offers and the obtaining of Regulatory Approval.

## VIII. Regulatory Approval

The effectiveness of any executed PA is expressly conditioned on PG&E's receipt of final and non-appealable CPUC approval of such PA ("Regulatory Approval").

## IX. Dispute Resolution

Except as expressly set forth in this Solicitation Protocol, by submitting an Offer, Bidder knowingly and voluntarily waives all remedies or damages at law or equity concerning or related in any way to the RFO, the Solicitation Protocol and/or any attachments to the Solicitation Protocol ("Waived Claims"). The assertion of any Waived Claims by Bidder may, to the extent that Bidder's Offer has not already been disqualified, automatically disqualify such Offer from further consideration in the RFO or otherwise.

By submitting an Offer, Bidder agrees that the only forums in which Bidder may assert any challenge with respect to the conduct or results of the RFO is through the Alternative Dispute Resolution ("ADR") services provided by the CPUC pursuant to Resolution ALJ-185, August 25, 2005. The ADR process is voluntary in nature, and does not include processes, such as binding arbitration, that impose a solution on the disputing parties. However, PG&E will consider the use of ADR under the appropriate circumstances. Additional information about this program is available on the CPUC's website at the following link: [www.cpuc.ca.gov/PUBLISHED/Agenda\\_resolution/47777.htm](http://www.cpuc.ca.gov/PUBLISHED/Agenda_resolution/47777.htm).

Participant further agrees that other than through the ADR process, the only means of challenging the conduct or results of the RFO is a protest to an Advice Letter Filing seeking approval of one or more Agreements entered into as a result of the RFO, that the sole basis for any such protest shall be that PG&E allegedly failed in a material respect to conduct the RFO in accordance with this Solicitation Protocol, and the exclusive remedy available to Bidder 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 Solicitation Protocol. Bidder expressly waives any and all other remedies, including, without limitation, compensatory and/or exemplary damages, restitution, injunctive relief, interest, costs, and/or attorney's fees. Unless PG&E elects to do otherwise in its sole discretion during the pendency of such a protest or ADR process,



the RFO and any related regulatory proceedings related to the RFO, will continue as if the protest had not been filed, unless the CPUC has issued an order suspending the RFO or PG&E has elected to terminate the RFO.

Bidder agrees to indemnify and hold PG&E harmless from any and all claims by any other Bidder asserted in response to the assertion of a Waived Claim by Bidder or as a result of a Bidder's protest to an advice letter filing with the CPUC resulting from the RFO.

Except as expressly provided in this Solicitation Protocol, nothing herein including Bidder'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. Nothing in this Solicitation Protocol is intended to prevent any Bidder from informally communicating with the CPUC or its staff regarding this RFO or any other matter.

## **X. Termination of the RFO-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 Bidders and without liability of any kind to, or responsibility of, PG&E or anyone acting on PG&E's behalf. Without limitation, grounds for termination of the Solicitation may include the assertion of any Waived Claims by a Bidder or a determination by PG&E that, following evaluation of the Offers, there are no Offers that meet the requirements of this RFO.

PG&E reserves the right to terminate further participation in this process by any Bidder, to accept any Offer or to enter into any Agreement, 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. PG&E shall have no obligation to consider any Offer.

In the event of termination of the RFO for any reason, PG&E will not reimburse Bidder for any expenses incurred in connection with the Solicitation. PG&E shall have no obligation to reimburse any Bidder's expenses regardless of whether such Bidder's Offer is selected, not selected, rejected or disqualified. Unless earlier terminated, the RFO will terminate automatically upon the execution of one or more PAs by selected Bidders as described herein. In the event that no PAs are executed, then the RFO will terminate automatically on July 31, 2016.

## **XI. Bidder's Representations and Warranties**

1. By submitting an Offer and clicking "Yes" to the "Acknowledgment of Protocol" section of the Offer Form, Bidder agrees to be bound by the conditions of the RFO, and makes the following representations, warranties, and covenants to PG&E, which representations, warranties, and covenants shall be deemed to be incorporated in their entirety into each of Bidder's Offers. Bidder agrees that an electronic signature of a duly authorized representative of Bidder shall be the same as delivery of an executed original document for purposes of the Offer Form.
  - Bidder has read, understands and agrees to be bound by all terms, conditions and other provisions of this Solicitation Protocol;

- Bidder has had the opportunity to seek independent legal and financial advice of its own choosing with respect to the RFO and this Solicitation Protocol, including the submittal forms and documents listed in this Solicitation Protocol which are posted on the RFO website;
  - Bidder warrants herein that the Product Contract Price and SC cost includes all Bidder's costs of adhering to the provisions of the PA;
  - Bidder has obtained all necessary authorizations, approvals and waivers, if any, required by Bidder to submit its Offer pursuant to the terms of this Solicitation Protocol and to enter into a PA with PG&E;
  - Bidder's Offer complies with all applicable laws;
  - Bidder has not engaged, and covenants that it will not engage, in any communications with any other actual or potential Bidder in the RFO concerning this solicitation, price terms in Bidder's Offer, or related matters and has not engaged in collusion or other unlawful or unfair business practices in connection with the RFO;
  - Any Offer submitted by Bidder is subject only to PG&E's acceptance, in PG&E's sole discretion; and
  - The information submitted by Bidder to PG&E in connection with the RFO and all information submitted as part of any Offer is true and accurate as of the date of Bidder's submission. Bidder also covenants that it will promptly update such information upon any material change thereto.
2. By submitting an Offer, Bidder acknowledges and agrees:
- That PG&E may rely on any or all of Bidder's representations, warranties, and covenants in the RFO (including any Offer submitted by Bidder);
  - That in PG&E's evaluation of Offers pursuant to the RFO, PG&E has the right to disqualify a Bidder that is unwilling or unable to meet any other requirement of the RFO, as determined by PG&E in its sole discretion.
3. BY SUBMITTING AN OFFER, BIDDER HEREBY ACKNOWLEDGES AND AGREES THAT ANY BREACH BY BIDDER OF ANY OF THE REPRESENTATIONS, WARRANTIES AND COVENANTS IN THESE RFO INSTRUCTIONS SHALL CONSTITUTE GROUNDS FOR IMMEDIATE DISQUALIFICATION OF SUCH BIDDER, IN ADDITION TO ANY OTHER REMEDIES THAT MAY BE AVAILABLE TO PG&E UNDER APPLICABLE LAW, AND DEPENDING ON THE NATURE OF THE BREACH, MAY ALSO BE GROUNDS FOR TERMINATING THE RFO IN ITS ENTIRETY.