



2019 Tree Mortality Non-Bypassable Charge Bundled RPS Energy Sale (“TM NBC Bundled RPS Energy Sale”) Solicitation Protocol

Issuance Date: March 25, 2019

2019 Tree Mortality Non-Bypassable Charge Bundled RPS Energy Sale Solicitation Protocol

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I. Overview

A. Overview

On December 21, 2018 the California Public Utilities Commission (“Commission” or “CPUC”) issued [Decision \(D.\) 18-12-003](#) (“Decision”) establishing a methodology for calculating a non-bypassable charge for costs associated with certain tree mortality biomass energy procurement. The non-bypassable charge will recover the net costs of the mandated biomass energy procurement intended to address California’s tree mortality crisis. The Decision requires that Pacific Gas and Electric Company (“PG&E”) make available for sale the bundled RPS-eligible energy and associated Renewable Energy Credits (“REC”) generated by PG&E’s Tree Mortality Power Purchase Agreements (“TM PPAs”) in order to establish a REC value to include in the non-bypassable charge calculation.

Pursuant to the Decision, PG&E is issuing the 2019 Tree Mortality Non-Bypassable Charge Bundled RPS Energy Sale Solicitation (“Solicitation” or “TM NBC Bundled RPS Energy Sale”) to solicit bids (“Bids”) from participants (“Participants”) for bundled RPS-eligible energy and associated RECs (collectively, “Product”) generated from PG&E’s TM PPAs with (1) Burney Forest Products and (2) Wheelabrator Shasta. This Solicitation protocol (“Solicitation Protocol”) describes the process by which PG&E seeks, evaluates, and accepts Bids in this solicitation from winning Participants (“Buyers”).

The TM NBC Bundled RPS Energy Sale complies with PG&E’s final 2018 RPS Plan, which was approved by the CPUC in [Decision \(D.\) 19-02-007](#).

PG&E will make all sales according to the terms and conditions set forth in the Agreement. This Solicitation Protocol sets forth the procedures a Participant must follow in order to participate in the Solicitation. Capitalized terms used in this Solicitation Protocol, but not otherwise defined herein, have the meanings set forth in the Agreement.

B. TM NBC Bundled RPS Energy Sale Solicitation Communication

PG&E has established the 2019 TM NBC Bundled RPS Energy Sale Solicitation website at <http://www.pge.com/rfo/tmnbcs>. All Solicitation documents, information, announcements and questions and answers will be posted and available to Participants at this website.

To ensure accuracy and consistency of the information provided to all Participants, PG&E encourages Participants to submit any inquiries via e-mail to TMNBCrecreales@pge.com and CC the Independent Evaluator (“IE”) at arroyosecoconsulting@gmail.com. With respect to a matter of general interest raised by any Participant, PG&E may, without reference to the inquiring Participant, post the question and PG&E’s response on PG&E’s website. PG&E will attempt to respond to all

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inquiries, but may decline to respond to any particular inquiry.

All correspondence sent to PG&E will be monitored by the IE, Lewis Hasihmoto of Arroyo Seco Consulting, who was selected to oversee this Solicitation. The IE is an independent, third-party evaluator who is required by the CPUC to monitor and evaluate certain competitive solicitations.

C. Schedule

The Solicitation 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 changes on PG&E’s Solicitation website. Also, as further described below, Participants may register at PG&E’s Request for Offer (RFO) website to receive notice of these and other Solicitation changes by electronic mail. PG&E will have no liability or responsibility to any Participant for any change in the schedule or for failing to provide notice of any change.

The schedule for this Solicitation is (all times are in Pacific Prevailing Time):

Table 1: 2019 TM NBC Bundled RPS Energy Sale Solicitation Schedule of Events

Date	Event
Ongoing	Participants may register online at PG&E’s RFO website to receive notices regarding the Solicitation
March 25, 2019	PG&E issues the Solicitation
April 2, 2019	Participants’ Webinar
April 17, 2019	Bids Due. Bid(s) must be submitted to the online platform at Power Advocate by 1 PM (PPT)
April 22, 2019	PG&E notifies qualified Participants
May 2019	PG&E and qualified Participants execute Agreement, which shall be subject to “CPUC Approval,” as provided in the Agreement
No later than 60 days after execution	PG&E submits Agreements for CPUC Approval

D. Events in the Solicitation Schedule

- a. Registration. Participants may register online to receive announcements and updates about this Solicitation through www.pge.com/rfo.

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- b. Issuance. PG&E will issue the Solicitation and post the Solicitation Protocol, form of Agreement, and all other solicitation materials on the Solicitation website.
- c. Participants' Webinar. PG&E will hold a Participants' Webinar to review key Protocol items related to this solicitation.
- d. Bids Due. Bids must be submitted via Power Advocate and must include all of the documents described in Section IV, Required Information. By submitting a Bid(s) and responding to this Solicitation, the Participant agrees to be bound by all of the terms, conditions and other provisions of this Solicitation and any changes or supplements to it that may be issued by PG&E.
- e. PG&E Selects Bids. Selected Bids ("Selected Bids") will be notified via email. PG&E will select Bids according to the evaluation criteria described in Section III, Evaluation Criteria. Bids beyond the Selected Bids may be placed on a waitlist to be selected in order of evaluation results and selection constraints should any Selected Bids fail to complete the Solicitation process.
- f. Execution of Agreement. PG&E will execute an Agreement with Participants with Selected Bids.
- g. Regulatory Approval. PG&E will submit all such Agreements to the CPUC for approval via an advice letter filing. Additional regulatory approval information is provided in Section VII, Regulatory Approval.

E. Disclaimers for Rejecting Bids and/or Terminating this Solicitation

This Solicitation does not constitute an offer to sell and creates no obligation to execute any Agreement or to enter into a transaction under an Agreement as a consequence of the Solicitation. PG&E shall retain the right at any time, at its sole discretion, to reject any Bid on the grounds that it does not conform to the terms and conditions of this Solicitation 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 Bid for any reason, including but not limited to the basis that a Bid is the result of market manipulation or is not cost-competitive or any other applicable reason;
- (b) modify this Solicitation and the form Agreement as it deems appropriate to implement the Solicitation and to comply with applicable law or other decisions or direction provided by the CPUC; and
- (c) terminate the Solicitation should the CPUC not authorize PG&E to sell the Product in the manner proposed in this Solicitation.

In addition, PG&E reserves the right to either suspend or terminate this Solicitation 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 Participant, whether submitting a Bid

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or not.

II. Solicitation Product and Goals

PG&E is seeking to sell bundled RPS-eligible energy and associated RECs generated from its existing TM PPAs listed in Table 1 below within the TM NBC Bundled RPS Energy Sale Solicitation.

Table 1: PG&E’s Existing TM PPAs

Facility Name	Contract Capacity (MW)	Initial Energy Delivery Date	Expected Delivery End Date
Burney Forest Products	29	11/1/2017	10/31/2022
Wheelabrator Shasta	34	12/2/2017	12/1/2022

PG&E will make available the information listed below via Power Advocate upon receiving an executed Attachment C – Confidentiality Agreement. Participants should submit their executed Confidentiality Agreements via Power Advocate. See section IV. A. – Submission Overview for Power Advocate link and instructions.

- PG&E’s existing executed TM PPAs listed in Table 1
- Historical generation data of facilities listed in Table 1

Please note that per [CPUC Resolution E-4977](#), effective as of January 31, 2019, PG&E is required to amend certain biomass related contracts, including PG&E’s existing TM PPAs listed in Table 1, related to compliance, reporting, payment, terms of default, feedstock requirements, and PG&E’s bankruptcy status. Specifically, Resolution E-4977 requires that PG&E propose modifications to the representations and warranties and events of default of the TM PPAs to account for PG&E’s status in bankruptcy and the related jurisdiction of a federal bankruptcy court. If such amendments are completed before the expiration of the applicable TM PPA, the Product will be subject the terms and conditions of the TM PPA, including such amendments.

A. Product Attributes

Product Attributes for TM NBC Bundled RPS Energy Sale Solicitation	
Product	<ul style="list-style-type: none"> • Bundled RPS-eligible energy and associated RECs from PG&E’s existing TM PPAs listed in Table 1
Pricing	<ul style="list-style-type: none"> • Energy – settled at the day-ahead Index (Locational Marginal Price) • REC – fixed price
Delivery Term	<ul style="list-style-type: none"> • Residual delivery term of PG&E’s existing TM PPAs <ul style="list-style-type: none"> ○ Burney Forest Products: Through 10/31/2022 ○ Wheelabrator Shasta: Through 12/1/2022

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	<ul style="list-style-type: none"> • Delivery start date occurs upon final CPUC Approval of Tier 1 AL
Quantity	<ul style="list-style-type: none"> • Unit-contingent - Buyer receives future full energy and REC output from the applicable TM PPA
Agreement	<ul style="list-style-type: none"> • Attachment B – 2019 TM NBC Bundled RPS Energy Sale EEI Master Agreement Confirmation. PG&E intends to execute two sales agreements total; one sales agreement per existing TM PPA.

III. Evaluation Criteria

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

A. Quantitative Evaluation

For Bids in the Solicitation, PG&E will consider Price offered as the sole quantitative criterion.

B. Qualitative Evaluation

For the Solicitation, PG&E may apply a qualitative adjustment factor for counterparties that have acceptable credit with PG&E and minimize proposed edits to the form of Agreement.

1. Credit

PG&E may consider the Participant’s capability to perform all of its financial and financing obligations under the Agreement and PG&E’s overall credit concentration with the Participant or its banks, including any of Participant’s affiliates.

2. Agreement Modifications

PG&E may assess the materiality and cost impact of any of Participant’s proposed modifications to the Agreement. PG&E has a preference for standardized Agreements. PG&E will consider edits to the Agreement in the following sections:

- Green Attributes Price
- Credit Terms

3. Other Qualitative Considerations

In addition to the criteria specifically listed above, PG&E may consider other qualitative factors that could impact the value of Bids, including, but not limited to: previous adverse commercial experience between PG&E and Participant; Participant concentration; and existence of an acceptable EEI Master Agreement between PG&E and Participant.

IV. Required Information

A. Submission Overview

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

<https://www.poweradvocate.com/pR.do?okey=89159&pubEvent=true>

PG&E strongly encourages Participants to register with Power Advocate at least one week before Bids are due. Detailed instructions for submitting Bid(s) and using Power Advocate are on PG&E's Solicitation 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 Participant's company name in each file name.

B. Required Forms

1. Bid Package

The following documents, which are on the PG&E's Solicitation website, must be completed and included with each PowerAdvocate Bid submission:

- a. Bid Form (Attachment A)
 - i. Participant may submit up to a total of two Bids – one Bid per facility listed in Table 1 under Section II, Solicitation Product and Goals. All Bids should be submitted on the same Bid Form.
 - ii. Participants submitting two Bids, one per facility, must state whether or not their Bids are mutually exclusive (i.e., If PG&E selects both Bids submitted, Participant can execute Agreements for both selected bids). Participants cannot submit Bids that are contingent on the acceptance of another Bid (i.e. Participants submitting two Bids, cannot require that both Bids be selected).
 - iii. Participant must provide all applicable information requested in the form, and all inputs must match the respective information provided in other required documentation.
 - iv. Brokers submitting on behalf of multiple counterparties may do so, but must designate the name of counterparty in the Bid Form.

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- v. Participant must agree to the Non-Disclosure attestation in the Bid Form.
- b. Redline of EEI Master Agreement Confirmation (Attachment B)
 - i. PG&E will consider edits to the Agreement in the following sections:
 - 1. Green Attributes Price
 - 2. Credit Terms
- c. Documentation of Entity Legal Status from the California Secretary of State
 - i. Participant or end-user counterparty must demonstrate that it has an “Active” legal status authorized by the California Secretary of State in order to engage in business with PG&E. A webpage screenshot verifying Participant or end-user counterparty’s “Active” legal status via the California Secretary of State’s webpage is acceptable. The California Secretary of State website is located at <https://businesssearch.sos.ca.gov/>.

V. Confidentiality

No Participant or representative of a Participant shall collaborate on or discuss with any other Participant or potential Bidding strategies, the substance of any Bid(s), including without limitation the price or any other terms or conditions of any Bid(s), or whether PG&E has Selected Bids or not.

All information and documents in Participant’s Package that have been 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 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, Participant’s Package will be disclosed to the IE.

Notwithstanding the foregoing, it is expressly contemplated that the information and documents submitted by Participant in connection with this Solicitation, including Participant’s confidential information, may be provided to the CPUC, its staff, and the Procurement Review Group (“PRG”), and established pursuant to D.02-08-071. PG&E retains the right to disclose any information or documents provided by Participant to the CPUC, the PRG, in the advice letter filing or in order to comply with any applicable law, regulation, or any exchange, control area or California Independent System Operator 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 ensure that the CPUC will afford confidential treatment to Participant’s confidential information, or that

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confidentiality agreement or orders will be obtained from and/or honored by the PRG, the California Energy Commission, or the CPUC. By submitting a Bid, Participant 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 Bids.

VI. Procurement Review Group Review

Following completion of the evaluation and ranking of Bids, PG&E will submit the results of the evaluation and its review to its PRG members. 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 Bids.

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 Bids and the obtaining of Regulatory Approval.

VII. Regulatory Approval

After Agreement execution, PG&E is required to submit executed Agreements to the CPUC for approval via an advice letter filing.

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

VIII. Dispute Resolution

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

By submitting a Bid, Participant agrees that the only forums in which Participant may assert any challenge with respect to the conduct or results of the Solicitation 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. 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.

Participant further agrees that other than through the ADR process, the only means of challenging the conduct or results of the Solicitation is a protest to an Advice Letter Filing seeking approval of one or more Agreements entered into as a result of the

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Solicitation, that the sole basis for any such protest shall be that PG&E allegedly failed in a material respect to conduct the Solicitation in accordance with this Solicitation Protocol, and the exclusive remedy available to Participant in the case of such a protest shall be an order of the CPUC that PG&E again conduct any portion of the Solicitation that the CPUC determines was not previously conducted in accordance with the Solicitation Protocol. Participant 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 Solicitation and any related regulatory proceedings related to the Solicitation, will continue as if the protest had not been filed, unless the CPUC has issued an order suspending the Solicitation or PG&E has elected to terminate the Solicitation.

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 Participant or as a result of a Participant's protest to an advice letter filing with the CPUC resulting from the Solicitation.

Except as expressly provided in this Solicitation Protocol, 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. Nothing in this Solicitation Protocol is intended to prevent any Participant from informally communicating with the CPUC or its staff regarding this solicitation.

IX. Termination of the Solicitation-Related Matters

PG&E reserves the right at any time, in its sole discretion, to terminate the Solicitation for any reason without prior notification to Participants and without liability 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 Participant or a determination by PG&E that, following evaluation of the Bids, there are no Bids that meet the requirements of this Solicitation.

PG&E reserves the right to terminate further participation in this process by any Participant, to accept any Bid or to enter into any Agreement, and to reject any or all Bids, 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 Bids.

In the event of termination of the Solicitation for any reason, PG&E will not reimburse Participant for any expenses incurred in connection with the Solicitation. PG&E shall have no obligation to reimburse any Participant's expenses regardless of whether such Participant's Package is selected, not selected, rejected or disqualified. Unless earlier terminated, the Solicitation will terminate automatically upon the execution of one or more Agreements by Participants with Selected Bids. In the event that no Agreements are executed, then the solicitation will terminate automatically on July 15, 2019.

X. Participant's Representations and Warranties

1. By submitting a Bid and clicking “Yes” to the “Acknowledgment of Protocol” section of the Bid Form, Participant agrees to be bound by the conditions of the Solicitation, 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 Participant's Package. Participant agrees that an electronic signature of a duly authorized representative of Participant shall be the same as delivery of an executed original document for purposes of the Bid Form.
 - Participant agrees to adhere and be bound by the confidentiality provisions described in the 2019 Tree Mortality Non-Bypassable Charge Bundled RPS Energy Sale Solicitation Protocol and the Confidentiality Agreement included as Attachment C to the Solicitation Protocol.
 - Participant has read, understands and agrees to be bound by all terms, conditions and other provisions of this Solicitation Protocol;
 - Participant has had the opportunity to seek independent legal and financial advice of its own choosing with respect to the Solicitation and this Solicitation Protocol, including the submittal forms and documents listed in this Solicitation Protocol which are posted on the Solicitation website;
 - Participant has obtained all necessary authorizations, approvals and waivers, if any, required by Participant to submit its Bid pursuant to the terms of this Solicitation Protocol and to enter into an Agreement with PG&E;
 - Participant's Package complies with all applicable laws;
 - Participant has not engaged, and covenants that it will not engage, in any communications with any other actual or potential Participant in the Solicitation concerning this Solicitation, price terms in Participant's Package, or related matters and has not engaged in collusion or other unlawful or unfair business practices in connection with the Solicitation;
 - Any Bid submitted by Participant is subject only to PG&E's acceptance, in PG&E's sole discretion; and
 - The information submitted by Participant to PG&E in connection with the Solicitation and all information submitted as part of any Bid is true and accurate as of the date of Participant's submission. Participant also covenants that it will promptly update such information with PG&E upon any material change thereto.
2. By submitting a Bid, Participant acknowledges and agrees:

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- That PG&E may rely on any or all of Participant's representations, warranties, and covenants in the Solicitation (including any Bid submitted by Participant); and
 - That in PG&E's evaluation of Bids pursuant to the Solicitation, PG&E has the right to disqualify a Participant that is unwilling or unable to meet any other requirement of the Solicitation, as determined by PG&E in its sole discretion.
3. BY SUBMITTING A BID, PARTICIPANT HEREBY ACKNOWLEDGES AND AGREES THAT ANY BREACH BY PARTICIPANT OF ANY OF THE REPRESENTATIONS, WARRANTIES AND COVENANTS IN THESE SOLICITATION INSTRUCTIONS SHALL CONSTITUTE GROUNDS FOR IMMEDIATE DISQUALIFICATION OF SUCH PARTICIPANT, 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 SOLICITATION IN ITS ENTIRETY.