

Bidding On The Army's Renewable Energy RFP: What You Need To Know

BY LAURA DIMUGNO

Last month, the U.S. Army issued a \$7 billion renewable energy request for proposals (RFP) as part of its goal to procure 25% - or approximately 1 GW - of its power from renewables by 2025.

The Army is seeking to buy, under long-term power purchase agreements (PPAs), the output of wind, solar, geothermal and biomass projects to be built at or near its bases, and has already identified over 180 sites it says are suitable for renewable energy production.

The Department of Defense (DOD) is only interested in purchasing the power from the projects, so bidders will be responsible for financing, designing, building, operating, owning and maintaining the renewable energy facilities.

According to law firm Akin Gump, which recently held a webinar on the topic, the Army's preference is for projects to be sited on DOD land, but it will also consider projects on private land.

The Army expects to select about four projects per year until 2015. Those projects could be any combination of renewable energy technologies - in other words, there are no carve-outs for wind, solar or any other resource.

Not any old RFP

Developers looking to bid on the Army's RFP should know that the process and requirements differ sub-



stantially from those of utility and commercial contracts, and working with the government presents both advantages and disadvantages, presenters at the webinar stressed.

For instance, one benefit of working with the DOD is that the Army will undertake much of the preliminary due-diligence work, including a National Environmental Policy Act (NEPA) review, thus eliminating some of contracting risk and making projects more attractive to financiers.

However, following the NEPA review, developers may be required to fulfill various mitigation measures, including securing environmental permits and approvals.

Projects selected under the RFP will also be subject to a host of requirements that may not always be applicable to commercial contracts. Many of these regulations fall under the Federal Acquisition Regulation and the Defense Federal Acquisition

Regulation Supplement, and include the Buy American Act, restrictions on certain foreign purchases and equal-opportunity clauses.

One of the unique aspects of the Army's renewable energy RFP is that it makes special allocations for small businesses. Proposals for projects smaller than 4 MW will be reserved for small businesses, and proposals for projects between 4 MW and 12 MW will be given a small-business preference. Companies of any size can propose projects larger than 12 MW.

According to the RFP's official documentation, a firm is considered a small business if its generation, transmission and/or distribution of electricity for sale and its total electricity output for the prior fiscal year were less than 4 TWh.

However, firms must be able to demonstrate that they have met certain corporate and technical experience requirements. For instance, wind energy developers must have completed at least three projects with a capacity of at least 4 MW, and those projects must have been operating for at least three years.

Evaluation

The Army's RFP will consist of a two-step contracting process, presenters at the webinar explained. During the first phase, the DOD will focus on selecting qualified bidders and will not yet consider specific projects or proposals.

The DOD will evaluate companies on a variety of criteria, including development experience, operations and maintenance experience under a PPA, past performance and the ability to finance projects.

Every 18 months or so, the DOD will evaluate the market to decide if it will conduct what it calls “on-ramps,” in which the government will accept new proposals, and “off-ramps,” in which it may remove companies that have not performed well or have not submitted acceptable proposals.

Although the price of projects will certainly factor into the second phase of the contracting process, the

financial considerations during the first phase will most likely be limited to the company’s financial wherewithal, explains Ed Zaelke, a partner at Akin Gump. In fact, no proof of financing commitment is required during the first phase of the contracting process.

According to Zaelke, the most important factors in the Army’s selection of bidders will be their qualifications and experience.

“Although the Army will be interested in cost, because of the structure, they’re probably going to be more interested in the qualifications of the bidders themselves,” Zaelke says. “What’s most important to the

Army is that they get a pool of qualified bidders.”

This includes experience not just in their particular field, but also in developing projects at or near military bases, Zaelke adds.

Furthermore, before bidding on the RFP, developers should ensure they have solid teams in place.

“Go in with a very strong team; pick your partners carefully,” Zaelke advises. “The winners of the [RFP] will be those that demonstrate that they have the strongest team.”

Proposals are due by Oct. 5, and the DOD expects to announce the RFP winners by the second fiscal quarter of 2013. 