

CENTRAL MAINE POWER COMPANY

**REPAIR AND REROOF WAREHOUSE LOWER ROOF,
MISCELLANEOUS REPAIRS,
NEW OVERHEAD DOOR AND PASS DOOR
AT PEAKS ISLAND SERVICE CENTER**

PORTLAND , MAINE

Prepared For:

Central Maine Power Company

83 Edison Drive

Augusta, Maine 04330

Prepared By:

*Civil/Structural Engineering:
Spaulding Engineering and Construction Services, Inc.*

24 Common Street

Waterville, Maine 04901

(207) 861-9923

Issued for Bid – 10-12-11

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I.

INSTRUCTIONS TO BIDDERS

RFP KJ #11623

I.

INSTRUCTIONS TO BIDDERS

1. SEALED PROPOSALS

- a) Are solicited herein by Iberdrola USA Management Corporation on behalf of Central Maine Power Company hereinafter referred to as Owner.
- b) Submit your original proposal by mail no later than 2:00 p.m. Wednesday, October 26, 2011 to Ms. Karen Jones, Senior Contract Administrator, Iberdrola USA Management Corporation, 89 East Avenue, Rochester, New York 14649-0001. Reference the given RFP number on your mailing envelope.

2. PROPOSALS

- a) Shall be executed in strict compliance with these Instructions to Bidders. All blank spaces in the documents shall be filled, signed in ink in long hand, and all numbers shall be stated in writing and in figures. The completed form shall be without interlineation, alterations, or erasures.
- b) Shall not contain any recapitulation of the work to be done. No changes shall be made in the phraseology of the form. No partial bids will be considered. Prices bid for alternates shall include all costs associated with implementation of the alternates. No alternates will be considered unless a complete base bid has also been submitted.
- c) Bids must be submitted in sealed envelopes, bearing on the outside the following: **Sealed Bid for Repair and Reroof Warehouse Lower Roof, Miscellaneous Repairs, New Overhead Door and Pass Door at Peaks Island Service Building**, the name of the Bidder and the Bidder's address, and the RFP number. Such bids must be enclosed in another envelope as inadvertently they might be opened as regular mail.
- d) Commercial questions should be referred to the following people:

Commercial: Karen Jones
Office Number: (585) 771-6004
Fax Number: (585) 771-2820
E-mail: karen.jones@iberdrolausa.com

Technical: Daniel E. Spaulding, P.E.
Spaulding Engineering and Construction Services, Inc.
24 Common Street
Waterville, Maine 04901
Office/Fax Number: (207) 861-9923
E-mail: dan@spauldingengineering.com

- (e) Bids sent by mail must be received on or before the date stated. Postmarks will not be considered. E-mails will be accepted as long as they are followed up with a hard copy within one (1) business day. Fax copies will not be accepted.
- (f) If no bid is to be submitted, so indicate on the signature page of the Proposal Form, sign and return the entire bid package to the name and address specified in Section I.2.d. of these Instructions to Bidders.
- (g) The Proposal shall include a statement that the enclosed Service Agreement is acceptable. If this is not the case, any and all changes that would be required to make the document acceptable shall be included in your proposal.

3. DRAWINGS AND SPECIFICATIONS

- (a) Drawings and Specifications will be issued by Owner and are an integral part of this RFP.
- (b) One (1) set of Drawings and bid documents including Specifications will be issued to each invited Bidder only, for the purpose of preparing a bid. No partial sets will be issued, nor will Drawings, or bid documents including Specifications be issued to firms wishing to submit material, equipment or other sub-bids to invited Bidders.
- (c) The Drawings issued with and listed in the Specifications are issued for bidding purposes only, and are not released for Contract or construction purposes.

4. THE BIDDER

- (a) Shall carefully examine all the documents pertaining to this scope of work including the Drawings and the Specifications. Failure to do so will not relieve a successful Bidder from its obligation to furnish all materials, supervision, labor, skill, services, tools, transportation, and equipment necessary to carry out the provisions of the Contract and to complete the contemplated work for the consideration set forth in its bid. The submission of a bid shall be a representation that the Bidder has examined the Drawings and Specifications and has become familiar with all of the controlling conditions.
- (b) Shall notify Owner in writing no later than Friday, October 19, 2011 if the Bidder finds discrepancies in, or omissions from these documents, including the Drawings and/or Specifications, or is in doubt as to their meanings. If explanation is necessary, a reply will be made by an addendum issued to Bidders. No oral statement shall change the requirements of the documents herein including the Specifications or Drawings unless confirmed in writing.
- (c) Shall state the prices for which the Bidder will execute the items of the work indicated.
- (d) Shall state in its proposal the terms under which the work extra to the Contract requirements will be done, as outlined in these RFP documents.
- (e) Shall indicate in its proposal the portions of the Contract work, if any, which will be subcontracted.
- (f) Shall sign the Bidder's name in the space provided therefore. If the proposal is made by a partnership or corporation, the name and address of the partnership or corporation shall be shown, together with the names of the partners or the officers. A proposal made by a partnership shall be acknowledged by one of the partners, a proposal made by a corporation by one of the authorized officers thereof.
- (g) If awarded the work, the Contractor will be required to furnish copies of Insurance Certificates endorsed to meet the requirements of the Contract.
- (h) Proposals will be evaluated and the order placed on the basis of full consideration of all items including, but not limited to, completion time and the set of prices received in each Bidder's proposal. Adjustment of original proposal prices will not be considered after receipt of proposals, except as required to adjust for design or scope changes.

5. CONTRACT FORM

- (a) The successful Bidder will be notified of the award of the work in writing by issuance of a purchase order, and shall execute a contract for same by written acknowledgment of the appropriate purchase order, within ten (10) days of notification.

6. THE OWNER

- (a) May during the bidding period advise the Bidders by addenda of additions, omissions, or alterations to these RFP documents including the Specifications and Drawings. All such changes shall be included in the work covered by the proposal and shall become a part of the Specifications as if originally included therein.
- (b) Reserves the right to reject any and all bids to waive any formalities in bidding, and/or to accept any bid as may be deemed best for Owner's interest.
- (c) Reserves the right to award all or any portion(s) of the work as Owner may elect.

7. EXECUTION, CORRELATION AND INTENT OF BID DOCUMENTS

- (a) Bid work as per the RFP documents. Make no changes therefrom without having first received written permission from the Owner. Where detailed information is lacking, before proceeding with the work, refer the matter to the appropriate party listed in these Instructions to Bidders for instruction. Any exceptions taken to the RFQ documents shall be submitted in the bid on a separate page entitled Exceptions clearly identifying the reference and proposing the alternate language desired.

8. TIME OF COMPLETION

- (a) Work shall start as soon as possible after award of contract and be completed no later than Friday, December 16, 2011.

9. APPROVAL OF MATERIALS

- (a) Bidders wishing to obtain approval of brands other than those specified by name, shall submit their request to that party listed in these Instructions to Bidders for approval. Approval by the Owner will be in the form of an addendum to the RFP documents issued to all prospective bidders.

10. BIDDERS LIST

- (a) Owner is restricting the Bidders on this project to an invited list of General Contractors. Each General Contractor will be responsible for obtaining subbids and material quotations if needed, as plans will not be on file at the plan rooms of F. W. Dodge Company, Associated General Contractors of Maine or the Dunlap Agency.

11. OPENING

- (a) Bids will be opened at the date and place as specified in this Instructions to Bidders.
- (b) Bids will be opened at a private opening.

12. SITE INSPECTION

- (a) A site review will be held on Tuesday, October 18, 2011. CMP has a boat that will take all bidders over to Peaks Island. CMP will meet all bidders at the Union Street substation on Union Street in Portland at 9:00 a.m. It is anticipated that the trip over, prebid meeting and return trip will take approximately three (3) hours. This site review is mandatory to bid this project. Should you have any questions, contact Robert Meader, 623-3521 ext. 2390.

13. TRANSPORTATION

- (a) Terms shall be F.O.B. destination jobsite, freight prepaid and allowed with freight cost listed separately, but not billed.

14. PAYMENTS

- (a) Payment terms are net 60 days.
- (b) All invoices shall be sent to Spaulding Engineering for review and approval. Once amount is agreed upon the original invoice shall be sent to the address specified on the Purchase Order.

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II.

PROPOSAL FORM

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**REPAIR AND REROOF WAREHOUSE LOWER ROOF, MISCELLANEOUS
REPAIRS,
NEW OVERHEAD DOOR AND PASS DOOR
AT PEAKS ISLAND SERVICE CENTER**

SPECIFICATION #

Contractor agrees to provide all labor, materials, tools, equipment, skill, transportation, supervision, and services in accordance with all documents included in this Request for Proposal.

A. Repair and Reroofing Lower Warehouse Roof - 34'-6" wide x 70' long (2415 square feet):

<u>Item No.</u>	<u>Item Description</u>	<u>Amount</u>
1.	Demolition of roofing, roof sheathing and rafters	\$ _____ _____ Words
2.	Demolition and disposal of asbestos roof flashing by Acadia Construction LLC	\$ _____ _____ Words
3.	New roof rafters and CDX roof sheathing	\$ _____ _____ Words
4.	New roof insulation and EPDM adhered roofing	\$ _____ _____ Words
5.	Aluminum roof trim	\$ _____ _____ Words

6. New roof drains, piping and insulation

\$ _____

Words

**Subtotal Lower Warehouse Roof Repair and Reroofing
Lump Sum Subtotal:**

\$ _____

Words

**B. Perform Demolition and Repairs of the Warehouse Building Wall Facing the
Ocean and new 10' W x 14' H overhead door:**

<u>Item No.</u>	<u>Item Description</u>	<u>Amount</u>
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1. Frame in and install texture 1-11 siding over plexi-glass windows

\$ _____

Words

2. Install new 10' W x 14' H overhead door, track and operator

\$ _____

Words

**Ocean Building Wall Repairs and New 10' W x14' H Overhead Door
Lump Sum Subtotal:**

\$ _____

Words

**C. Perform Demolition and Construct New Vent Opening on the Left Side of the
Building Lump Sum Subtotal:**

\$ _____

Words

**D. Perform Demolition and Install New Office Door, Frame and Hardware Lump
Sum Subtotal:**

\$ _____

Words

TOTAL PEAK'S ISLAND SERVICE BUILDING LOWER WAREHOUSE ROOF REPAIRS, NEW 10' W X 14' H OVEREHAD DOOR, VENT COVER PROJEC TOTAL

\$ _____

Words

E. LABOR, EQUIPMENT RATES AND MATERIALS MARK-UPS

1. The Contractor shall provide with their bid a list of all labor and equipment rates for this project. These rates will be used for any additional work authorized for this Project.

2. The Contractor shall provide the percentage mark-up to be applied to materials _____%, subcontractors _____% and to rented equipment _____%.

F. EXTRA WORK:

1. Extra work may be authorized on a T & M basis as approved by the Owner. All extra work will be authorized with a written Change Order form.

G. EXCEPTIONS TO THE REQUEST FOR PROPOSAL:

The Contractor shall state any exceptions to this Request for Proposal. If the Contractor takes no exceptions to the Request for Proposal, they shall indicate "NO EXCEPTIONS".

H. ACKNOWLEDGEMENT OF ADDENDUM:

Addendum Number

Date

All invoices associated with this project shall include a breakdown of materials, labor and subcontractors involved.

Bidder: _____

Signature: _____

Name: _____

Title: _____

Address: _____

Date: _____

E-mail Address: _____

Tel. No.: _____

Fax Number: _____

The Contractor shall include with their bid the following:

1. A list of all subcontractors proposed for this project.
2. Milestone schedule.
3. List of project manager and superintendent with resumes to be used on this Project.

PART III
AGREEMENT FOR SERVICES

Agreement for Services

This AGREEMENT is made this _____ day of September, 2011 between **Central Maine Power Company** (“Customer”), with its principal office located at 83 Edison Drive, Augusta, ME 04336 and _____ (“Supplier”) with its principal office located at _____. In consideration of the covenants herein, the parties agree as follows:

WHEREAS, Customer desires to procure certain services from Supplier, including the services described in Schedule A, attached hereto and made part hereof (the “Services”); and

WHEREAS, Supplier states that it is an established and well-known provider of the Services possessing the skills, qualifications, and experience necessary to perform and manage such Services in an efficient, cost-effective, and controlled manner, with a high degree of quality and responsiveness, and that it has successfully performed similar services for other customers and is willing to provide the Services to Customer in accordance with the terms and conditions of this Agreement; and

WHEREAS, in reliance upon such statements, Customer has selected the Supplier to provide the Services, which shall be procured and performed in accordance with this Agreement.

NOW THEREFORE, in consideration of the mutual covenants contained herein, and other good and valuable consideration, Customer and Supplier agree as follows:

1. Definitions.

1.1 “Affiliate” means, with respect to a person or entity, any individual, corporation, partnership, firm, joint venture, association, joint stock company, trust or other unincorporated organization, directly or indirectly controlling, controlled by, or under common control with, such person or entity. The term “control” shall mean the possession, directly or indirectly, of the power to direct the management or policies of a person or an entity. A voting interest of ten percent (10%) or more shall create a rebuttable presumption of control.

1.2 “Contract Documents” means this Agreement (including all Schedules, if any, attached or incorporated by reference), the Purchase Order (as defined below), the plans and specifications, and all addenda and change orders issued by Customer. Any reference to this Agreement shall be deemed a reference to all the Contract Documents.

1.3 “Effective Date” means the date this Agreement is executed by Customer and Supplier.

1.4 “Materials” means materials, supplies, equipment, machinery, tools, and all other items and facilities to be used, furnished, or delivered in connection with the Services.

1.5 "Services" means the services described in Schedule A, attached hereto and part hereof, including any design, engineering, installation, construction, modification, and or testing to be performed as part of the Services and includes the Materials necessary for the provision of the Services.

1.6 "Purchase Order" means a purchase order issued by the Customer for the Services to be provided in accordance with this Agreement.

2. Scope

2.1 Scope of Services. Supplier shall perform the Services described herein and in Schedule A hereto. Supplier shall assign sufficient qualified employees or agents ("Personnel") to complete the Services in a timely manner, and complete the Services promptly and as specified herein. Supplier shall immediately bring to Customer's attention any errors, omissions, discrepancies or conflicts with respect to the Contract Documents or the Scope of Services.

2.2 Time. Supplier shall begin performance of the Services as soon as reasonably practical after the Effective Date. Time is of the essence in this Agreement. At Customer's request, Supplier shall promptly furnish a detailed schedule acceptable to Customer. If the Services falls behind schedule in whole or in part as the result of acts or omissions of Supplier, at its expense, Supplier shall take all steps necessary to return performance of the Services to the schedule, including (without limitation) the use of subcontractors, overtime, and shift work.

2.3 Subcontractors. Customer must give its written approval before Supplier uses any subcontractors in the performance of any Services. If Supplier shall cause any part of the Services to be performed by a sub-contractor, the provisions of this Agreement shall apply to such sub-contractor and its officers, agents or employees in all aspects as if they were employees of Supplier, and Supplier shall not thereby be discharged from any of its obligations and liability hereunder, but shall be liable hereunder for all acts and omissions of the sub-contractors. Nothing shall create any contractual relationship between Customer and any sub-subcontractor.

3. Term and Compensation.

3.1 Term. This Agreement shall be effective as of the Effective Date and shall last for a term of _____ year(s). Thereafter this Agreement shall renew for successive one (1) year terms unless terminated by the Customer in accordance with this Agreement.

3.2 Compensation. In full consideration for the complete and satisfactory performance of the Services, Customer shall pay the amount set forth on the Purchase Order and as set forth on Schedule B attached hereto and incorporated herein. The price(s) charged by Supplier for all time and material Services shall be no more than Supplier's standard prices in effect for similar work.

3.3 Invoices. In accordance with the Purchase Order (including any milestones and retainages set forth therein), Supplier shall submit invoices prepared in such form and supported by such documentation as Customer may reasonably request. Customer shall pay undisputed amounts due within 60 days after invoice receipt. Additional payment terms may be set forth on the Purchase Order. The final invoice may be submitted after Customer accepts the Services.

3.4 Waiver. No inspection, approval, payment, or acceptance of the Services shall be construed as evidence of satisfactory performance of any Services not performed in accordance with this Agreement, as a waiver of any of Customer's rights, or as relieving Supplier from its responsibility under this Agreement. Acceptance by Supplier of final payment shall constitute a waiver of all claims which Supplier may have against Customer.

3.5 Withholding. Customer may withhold payment to the extent reasonably necessary to protect Customer from (without limitation) defective Services, damage to Customer or a third party, failure to carry out the Services in accordance with this Agreement, potential claims of a third party(ies), and reasonable doubt that the Services can be completed for the balance due or on time.

4. Certain Obligations of Supplier.

4.1 Examination. Supplier represents that it has examined the site where the Services shall be performed and has investigated and considered the conditions affecting the performance of the Services and hereby waives all claims against Customer on account of any such conditions.

4.2 Warranty. Supplier represents and warrants that all services shall be performed and completed using its best efforts and skills. The Services shall be of high quality; performed in accordance with sound, generally accepted professional practices and by fully experienced, equipped, organized, and properly qualified individuals; free from defaults and defects in workmanship, title and Materials; and in compliance with applicable specifications and fit for its intended purpose. All Materials shall be new, free from defects and workmanship, material, and title, and approved by or acceptable to Customer. Supplier shall be solely responsible for all means, methods, techniques, sequences, and for coordinating all portions of the Services. The Services shall not be deemed completed until all applicable drawings and other documents, if any, have been completed, delivered, and accepted by Customer. Customer will rely upon the accuracy, competence, and completeness of the Services. Supplier shall comply with all applicable laws, rules and regulations, including (without limitation) corporate policies of Customer. Except as otherwise expressly specified, Supplier shall procure, pay for and comply with the terms and conditions of all applicable permits, licenses and inspections.

4.3 Remedy. If the Services do not comply with the foregoing warranties for up to one year after final acceptance of the Services, Supplier shall reperform, repair or replace the Services, including modifications or additions as may be reasonably necessary to correct any defect or failure. The choice of repair or replacement will be made by Customer. Reperformed, repaired or replaced Services shall be subject to the same terms and warranties as provided for the original

Services. If Supplier cannot reperform the defective Services within a reasonable period of time, considering Customer circumstances, Customer may elect to remedy the defect and bill Supplier therefore. If Customer determines that reperformance is no longer feasible, Supplier shall refund any compensation paid to it for such Services and reimburse Customer for actual damages incurred and damages which may be foreseeably incurred to the extent they are attributable to acts or omissions of Supplier.

4.4 Protection. Supplier shall take all necessary steps to protect and prevent damage or injury to the Services, persons, or property of Customer and others, including (without limitation) if applicable the responsibility for the security of the Services and site. Supplier shall perform the Services, including storage of Materials, so as not to interfere with the progress of the Services, Customer's normal operations, or the activities of others.

4.5 Inspection. Supplier shall permit and facilitate inspection of the Services by Customer and its agent's at all reasonable times.

5. Insurance. Supplier shall maintain insurance in accordance with the requirements as set forth in Schedule C. Supplier must maintain applicable insurance. An insurance certificate must be mailed to Customer prior to starting Services.

6. Audit. For all Services not performed on a fixed-price basis, Supplier shall keep accurate records and accounts showing all direct and indirect charges, disbursements, costs or expenses incurred by Supplier in the performance of the Services. Upon reasonable notice, Customer shall have the right to audit Supplier's records and accounts up to two years after payment of the final invoice for the Services. Supplier shall also allow Customer to audit or inspect Supplier's facilities and books and records to determine Supplier's compliance with this Agreement, including (without limitation) quality assurance, project management, and other standards.

7. Changes. At any time, Customer may make changes ("Changes") in the Services, as it deems necessary or appropriate. Changes include (without limitation) additions to or omissions from the Services, schedule changes, or a temporary suspension of all or part of the Services. Within three days after any Change proposal from Customer, Supplier shall notify Customer of any additional time or compensation which will be necessitated by the Change. The resulting time to complete the Services and/or the cost or credit to Customer shall be equitably and mutually determined by Customer and Supplier. No additional time or compensation shall be due to the extent a Change results from the fault or negligence of Supplier. No Change shall be binding unless made in a subsequent Customer Purchase Order.

8. Proprietary Information. Data or information generated or acquired during this Agreement relating to Customer which is not otherwise publicly available, shall belong to and be proprietary to Customer and shall be kept secret by Supplier, although Supplier may use it to the extent necessary to perform the Services. Drawings, specifications, calculations, reports, Services in process, models, or other work product, if any, prepared by Supplier shall become the property of Customer when prepared and shall be delivered to Customer upon request and, in any event, upon the termination of this Agreement for any reason. Supplier may keep copies or samples thereof for its internal use (but not disclosure to others), but Customer shall retain all intellectual property therein. Supplier hereby irrevocably assigns to Customer all right, title and interest in such items,

and, at Customer's option and expense, shall execute any documents reasonably requested by Customer for the assignment, registration, or other protection of any related proprietary right.

9. Confidentiality. Supplier, its employees and agents, shall treat any information, (including any technical information, experience or data) regarding Customer or its Affiliates plans, programs, plants, processes, costs, equipment, operations, or customers, which may be disclosed to, or come within the knowledge of, Supplier its employees and agents in the performance of this Agreement, as confidential, and will not use or disclose this information to others, during the term of this Agreement, and for three (3) years thereafter, except as is necessary to perform the Services hereunder, without Customer's prior written consent. The provisions of this Article shall not apply to any information referred to in this Section which (i) has been published and has become part of the public knowledge through no effort by Supplier, its employees, or agents, (ii) has been furnished or made known to Supplier or Supplier's Affiliates by third parties (other than those acting directly or indirectly for or on behalf of Customer or Customer Affiliate) as a matter of legal right and without restriction on disclosure, (iii) was in Supplier's possession prior to disclosure by Customer or its Affiliates and was not acquired by Supplier or Supplier's Affiliates, its employees and agents directly or indirectly from Customer or its Affiliates or, (iv) is required by law or by any other governmental regulatory authority to be disclosed.

Any information, which is supplied by the Supplier to Customer or a Customer Affiliate under this Agreement, will be similarly restricted. Customer and Customer Affiliate will not disclose such information to others or publish it in any form at any time; provided, however, that notwithstanding the foregoing, Customer may disclose any such information to its Affiliates, employees, and consultants, to any regulatory agencies or instrumentality's when such disclosure is necessary, or otherwise required by law. Customer will cooperate with the Supplier in an effort to minimize the amount of such information, which will be disclosed in any such case, and to make reasonable efforts to secure confidential treatment of such information.

In no event shall Customer's or its Affiliates' names and/or logo or the name and/or logo of its parent company be used, whether written or verbal, duplicated, reproduced by any means whatsoever without the prior written permission of the Customer.

All inquiries by any governmental, business, or other entity, including media, regarding any Services performed or to be performed by Supplier for Customer shall be directed by Supplier to Customer for response.

10. Force Majeure. Neither party shall be liable for its failure to perform hereunder to the extent circumstances arise which are beyond its reasonable control and which could not have been avoided by the exercise of due diligence and foresight. The party prevented from performance shall diligently take all steps reasonably available to overcome the cause of such inability to perform and shall resume its performance as soon as practicable.

11. Indemnification.

11.1 Generally. Supplier will fully indemnify, defend at its expense and hold harmless the Customer and its Affiliates, directors, officers, employees, and agents (the "Indemnitee") from and against any and all claims, demands, suits, losses, costs, fees, damages or

expenses it may suffer, or for which it may be held liable, whether including, without limitation, reasonable expenses and attorneys fees incurred in the connection therewith, by reason of (A) any patent, trademark, or copyright infringement claim, or any design, device, process or procedure used, installed or provided by the Supplier or its agents or subcontractors under this Agreement; (B) any work-related accident or injury affecting an employee, agent or subcontractor of the Supplier, arising in connection with Service performed under this Agreement; (C) any claim by an agency or instrumentality of the federal, state or any local government, or by an employee, agent or subcontractor of the Supplier alleging that (i) the Indemnitee is required to maintain worker's compensation or unemployment or any other type of insurance upon any employee, agent or subcontractor of the Supplier; (ii) the Indemnitee is liable for tax payments or withholding with respect to any employee, agent or subcontractor of the Supplier; (iii) any employee, agent or subcontractor of the Supplier is entitled to receive employee benefits from the Indemnitee, including, without limitation, vacation, deferred compensation, medical, pension, 401(k) or any other benefit available to the Indemnitee's employees; and (iv) the Indemnitee is liable to any party, for any reason, due to the negligent performance of Services or omissions by an employee, agent or subcontractor of the Supplier; (D) bodily injury, including death, to any person or persons due to the negligent, reckless or willful actions or omissions of the Supplier or its agents or subcontractors; (E) damage to or destruction of any property, including loss of use thereof, due to the negligent, reckless or willful actions or omissions of the Supplier, or its agents or subcontractors. Individual employees, agents and subcontractors of the Supplier who are performing Services for the Indemnitee under this Agreement shall be considered to be employees, agents or subcontractors of the Supplier for all purposes under this Agreement, notwithstanding any judicial or administrative determination that such employees, agents or subcontractors of the other party should be regarded as employees under applicable law. All actions of the employees, agents and subcontractors of the Supplier under this Agreement shall be deemed to be actions of the Supplier under these indemnities and this Agreement. In furtherance of the foregoing indemnification and not by way of limitation thereof, the Supplier hereby waives any defense or immunity it might otherwise have under applicable worker's compensation laws or any other statute or judicial decision (including, for Services to be conducted in Maine, without limitation, *Diamond International Corp. v Sullivan & Merritt, Inc.* 493 A2d. 1043 (Me 1985)) disallowing or limiting such indemnification, and the Supplier consents to a cause of action for indemnity.

11.2 Taxes. Supplier similarly agrees to fully indemnify, defend and hold Customer harmless against liability or expense on account of all contributions, assessments, and taxes now or hereafter imposed by any governmental authority with respect to the compensation of Supplier. Supplier warrants that all sales, use, gross receipts, and other similar taxes, if any, imposed in connection with the Services or Materials are included in the price for the Services and shall not be billed as an extra unless Customer expressly gives its permission in writing.

12. Termination.

12.1 Cause. Customer, reserving to itself the right to receive such other damages and remedies as it may have pursuant to this Agreement or at law or in equity, has the right to terminate this Agreement, by giving written notice of termination to Supplier of the occurrence of any of the following:

(a) Supplier defaults in the observance or performance of any covenant, agreement or condition contained in this Agreement if within ten (10) days after the giving of written notice to Supplier of such failure of performance, Supplier has not cured such failure or if such failure of performance cannot be cured in ten (10) days, if Supplier has not commenced curing such failure of performance promptly and within such ten (10) day period is not effectuating such cure with haste and does not cure such failure of performance within a reasonable time, not to exceed, thirty (30) days from receipt of the notice specified herein.

(b) In the event that Supplier is declared to be bankrupt or insolvent, Supplier makes an assignment for the benefit of creditors, Supplier shall file a voluntary petition in bankruptcy or insolvency or an involuntary petition is filed against Supplier, or a receiver shall be appointed for Supplier and such appointment or bankruptcy or insolvency proceedings, petition, declaration or assignment is not set aside within thirty (30) days.

(c) There has been a material adverse change in the financial condition of Supplier that affects the ability of Supplier to perform.

12.2 Convenience. Customer may terminate this Agreement for any reason at any time (“Termination for Convenience”) or Customer may similarly terminate any specific portion of the Services for any reason and at any time. Termination for Convenience shall take place five (5) days from issuance of written notice by Customer. In the event the Supplier has not defaulted, Customer agrees to pay for all Services rendered to the termination date pursuant to this Agreement, provided, however, that such payment shall not result in total payment(s) to the Supplier exceeding the maximum amount payable under the terms of the applicable Purchase Order. This provision shall not be deemed to limit or otherwise affect Customer’s right to terminate this Agreement for breach or default by the Supplier.

13. Employee Solicitation. During the term of this Agreement and for a period of one (1) year thereafter, except with the prior written consent of Iberdrola USA Management Corporation, Supplier shall not offer employment to, or employ, any employee of Iberdrola USA Management Corporation or Iberdrola USA Management Corporation’s current or future Affiliates, and Supplier shall not induce or attempt to induce, directly or through an agent or third party, any such employee to leave the employ of Iberdrola USA Management Corporation or Iberdrola USA Management Corporation’s current or future Affiliates.

14. Miscellaneous. This Agreement and the contract documents as defined herein constitute the entire agreement between the parties and supersede all prior or contemporaneous communications or agreements, written or oral, with respect to the Services. Any reference to Supplier shall be deemed a reference to Supplier, its employees and subcontractors and those under their direction and control. Supplier shall not assign this Agreement (or any monies due hereunder) nor subcontract its obligations without the prior written consent of Customer. Any such attempted assignment or other transfer without such consent shall be void. This Agreement may be amended only by a writing signed by the parties. The failure of either party to enforce any provision of this Agreement shall not constitute a waiver thereof nor of the right to seek any other remedy. No waiver shall be valid unless in writing signed by the waiving party. Addresses for notice shall be as set forth in the preamble or as changed by notice. This Agreement shall be governed by the laws of

the state of New York without regard to conflict of law principles. Any dispute shall be resolved in courts located in the state of New York, and Supplier consents to their personal jurisdiction. All sections or provisions of this Agreement with terms containing obligations or duties which by their nature are to be or may be performed beyond any termination hereof, shall survive the termination of this Agreement without regard to the reason for termination, including, without limitation, Sections 3, 4, 5, 6, 8, 9, 11, 13, and 14.

15. Iberdrola USA Code of Conduct. Supplier shall comply with the Iberdrola USA Code of Conduct in the performance of the Services under this agreement. The Iberdrola USA Code of Conduct can be found at the Iberdrola USA website (www.iberdrolausa.com) under Corporate Governance on the Financial Information header.

16. Performance Monitoring. Customer will evaluate Suppliers performance by utilizing Supplier Corrective Action Reports and Supplier Performance Evaluation Reports. The Supplier must provide upon request the OSHA incident rate and Experience Modification Rate for Customer's review. The Customer will evaluate the Supplier's performance upon the conclusion of the Services by completing the specified report. The Customer will continuously monitor the Supplier's performance.

17. Continuous Improvement. Continuous improvement is the foundation of this Agreement. Supplier warrants that it will pass on to Customer in the form of price reductions 50 percent of Supplier's cost savings made possible by process improvements, reductions in material costs and the like. Supplier likewise will use its best efforts to improve continuously its performance in all areas. In particular, Supplier will evaluate opportunities for cost/price reductions on items and services ordered and to be ordered and communicate them promptly to Customer. Supplier has specifically identified target cost reductions of 2% beyond the prices shown in Schedule B for the Term, and agrees to work diligently with Customer personnel toward attainment of this objective. Supplier is expected to advance its economies of production, service, service delivery, material handling and technical prowess at least as fast as other competitors in its industry, and to offer the price and performance benefits of those improvements to Customer, as soon as they become available.

18. No Dispute. Supplier covenants that it is not aware of any pending billing dispute or other contractual dispute (pursuant to current contracts or contracts no longer in effect) or any pending or threatened litigation between Supplier and/or any of Supplier's Affiliates and Customer and/or and of Customer's Affiliates.

19. Supplier Security Requirements. Supplier shall comply with Customer's Supplier Security Requirements in their performance of Services for Customer under this agreement.

Supplier shall be familiar with and shall comply with the requirements of the NERC CIP- 004 for projects or services at or relating to critical cyber assets and critical company operating facilities ("Critical Infrastructure"). The specific CIP Standard follows:

CIP-004 Excerpt:

R3. Personnel Risk Assessment --The Supplier shall have a documented personnel risk assessment program, in accordance with federal, state, provincial, and local laws, and subject

to existing collective bargaining unit agreements, for personnel having authorized cyber or authorized unescorted physical access. A personnel risk assessment shall be conducted pursuant to that program prior to such personnel being granted such access except in specified circumstances such as an emergency. The personnel risk assessment program shall at a minimum include:

R3.1. The Supplier shall ensure that each assessment conducted include, at least, identity verification (e.g., Social Security Number verification in the U.S.) and seven- year criminal check. The Supplier may conduct more detailed reviews, as permitted by law and subject to existing collective bargaining unit agreements, depending upon the criticality of the position.

R3.2. The Supplier shall update each personnel risk assessment at least every seven years after the initial personnel risk assessment or for cause.

R3.3. The Supplier shall document the results of personnel risk assessments of its personnel having authorized cyber or authorized unescorted physical access to Critical Cyber Assets, and that personnel risk assessments of contractor and service vendor personnel with such access are conducted pursuant to Standard CIP-004.

20. Utilization of Small Business Concern. Supplier and subcontractors of all tiers must comply with section 52.219-8 of the Federal Acquisition Regulation. This policy requires that small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns shall have the maximum practicable opportunity to participate in the performance of Services.

21. Small Business Subcontracting Plan. In accordance with section 19.702(a) (1) and (2) of the Federal Acquisition Regulation, each Supplier (except small business concerns) whose contract is expected to exceed \$550,000 (\$1,000,000 for construction) and has subcontracting possibilities is required to submit an acceptable subcontracting plan to the Customer. The plan shall include spending goals with businesses that are defined by the U.S. Small Business Administration as small, women-owned small, veteran-owned small, service-disabled veteran-owned small, HUBZone, small disadvantaged (SDB), and minority-owned; as defined by the National Minority Supplier Development Council. If the Supplier fails to submit a plan within the time limit prescribed by the Customer, Customer may terminate this Agreement.

The Supplier assures that the clause entitled “Small Business Subcontracting Plan” will be included in all subcontracts, that offer further subcontracting opportunities, and all subcontractors (except small business concerns) who receive subcontracts in excess of \$550,000 (\$1,000,000 for construction) will be required to adopt a plan similar to this plan.

22. Notices. Along with all other correspondence requirements included in this Agreement, any notice, request, approval or other document required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been sufficiently given when delivered in person or deposited in the U.S. Mail, postage prepaid, return receipt requested, addressed as specified herein or to such other address or addresses as may be specified from time to

time in a written notice given by such party. The parties shall acknowledge in writing the receipt of any such notice delivered in person.

All communications to Iberdrola USA Management Corporation shall be directed to:

Iberdrola USA Management Corporation
Contract Administration
89 East Avenue
Rochester, NY 14649
Phone: 585-724-8028
Fax: 585-771-2820

All communications to Supplier shall be directed to:

Supplier Name _____
Contact Name _____
Title _____
Email Address _____
Street Address _____
City, St, Zip _____
Phone _____
Fax _____

IN WITNESS WHEREOF, Customer and Supplier have each caused this Agreement to be signed and delivered by it's duly authorized representative as of the date first given above.

CUSTOMER

Signature

Print Name

Title
Authorized Procurement Representative

Date

SUPPLIER

Signature

Print Name

Title

Date

CUSTOMER

Signature

Print Name

Title

Date

SCHEDULES:

- Schedule A: Scope of Services
- Schedule B: Pricing Terms
- Schedule C: Insurance Requirements

Schedule A

Scope of Services

Schedule B

Pricing Terms

Schedule C

Insurance Requirements

Before commencing Services, the Supplier shall procure and maintain at its own expense for a period of two years beyond completion of the Services, the insurance types, limits, terms, and conditions listed in Section 1 below. The amounts as specified are minimums only. The actual amounts above the minimums shall be determined by the Supplier. In addition, for any Services that are authorized to be subcontracted, the supplier shall require each subcontractor to procure and maintain all insurance as outlined in section one.

IF YOU DO NOT HAVE A CURRENT CERTIFICATE ON FILE WITH CUSTOMER prior to commencement of Services, Certificates of Insurance evidencing supplier's and/or subcontractor's possession of insurance as outlined in Section 1 shall be filed with Customer for its review.

Certificates of Insurance should be mailed to the Procurement Department at the following address:

**Iberdrola USA Management Corporation
Procurement Department/Insurance Cert.
89 East Avenue
Rochester, NY 14649-0001**

1. **Required Insurance Coverage's and Minimum Amounts**

Each insurance policy shall be placed with an insurance company licensed to write insurance in the State where the Services are to be performed and shall have an A.M. Best's Rating of not less than "B+" and a policyholder surplus of at least \$25,000,000.

Each insurance policy, except Workers' Compensation and Employers' Liability, shall be endorsed to add Customer as an additional insured. All insurance where Customer is an additional insured must contain provisions which state that the policy will respond to claims or suits by Customer against the Supplier/Consultant/ Labor supplier/etc. In addition, Customer should be notified of any reduction in the aggregate policy limits.

Each policy shall be endorsed to provide a minimum of thirty (30) days prior written notice of cancellation, intent not to renew, or material change in coverage.

Each policy shall be endorsed to provide a breach of warranty clause.

In the event Supplier and/or Subcontractor has a policy(ies) written on a "claims-made" basis, such insurance shall provide for a retroactive date not later than the commencement of Services under this agreement. In addition, the Supplier and/or Subcontractor will guarantee future coverage for claims arising out of events occurring during the course of this agreement.

All of the insurance required hereunder will be primary to any or all other insurance coverage in effect for Customer.

- 1.1 Workers' Compensation and Employers' Liability Insurance in accordance with the statutory requirements of the State of New York. For Services that are conducted outside of New York State, the minimum limit for Employers' Liability Insurance should be \$500,000 each accident, \$500,000 disease-policy limit, \$500,000 disease-each employee.
- 1.2 Automobile Liability insuring any auto, all owned autos, hired autos, and non-owned autos with a bodily injury and property damage combined single limit of \$5,000,000 per occurrence.
- 1.3 General Liability (Comprehensive or Commercial Form), including coverage for Premises/Operations, Underground/ Explosion & Collapse Hazard, Products/Completed Operations, Contractual Liability specifically insuring the attached Indemnity Agreement, Independent Contractors, Broad Form Property Damage, and Personal Injury, in the amount of \$5,000,000 per occurrence and \$5,000,000 aggregate.

The amount of insurance may be satisfied by purchasing primary coverage in the minimum (or greater) amounts specified or by purchasing a separate excess Umbrella Liability policy together with lower limit primary coverage.

Each General and/or Umbrella Liability Insurance policy shall be endorsed with the following Cross Liability clause: In the event of claims being made by reason of personal and/or bodily injuries suffered by any employee or employees of one insured hereunder for which another insured hereunder is or may be liable, then this policy shall cover such insured against whom a claim is made or may be made in the same manner as if separate policies had been issued to each insured hereunder, except with respect to limits of insurance. In the event of claims being made by reason of damage to property belonging to any insured hereunder for which another insured is or may be liable, then this policy shall cover such insured against whom a claim is made or may be made in the same manner as if separate policies had been issued to each insured hereunder, except with respect to the limits of insurance.

None of the requirements contained herein as to types, limits and approval of insurance coverage to be maintained by Supplier or Subcontractors are intended to, nor shall they in any manner limit or qualify the liabilities and obligations assumed by Supplier or Subcontractor under this agreement.