

CAPE LIGHT COMPACT Request for Proposals

For

All-Requirements Retail Electric Power Supply for Residential, Small Commercial/Industrial, and Medium/Large Commercial/Industrial Accounts

1. Introduction

The Cape Light Compact (the “**Compact**”) was formed in 1997 through an intergovernmental agreement of the twenty-one Cape and Vineyard towns and two counties in the Commonwealth of Massachusetts (the “**Member Municipalities**”) with the objective of securing competitive power supply, encouraging energy efficiency and providing for consumer advocacy. For further information on the Compact and its programs, go to <http://www.capelightcompact.org/>.

The approximately 160,000 residential, small commercial/industrial, and medium and large commercial/industrial accounts (the “**Accounts**”) of the Member Municipalities, located on Cape Cod and Martha’s Vineyard, represent approximately 1,200,000 MWh of annual retail sales. The Compact seeks proposals to serve this entire load with all-requirements retail power supply. Load associated with the Member Municipalities’ municipal accounts is not included as part of this Request for Proposals (“**RFP**”). All-requirements retail power supply for all of the Accounts commences with the January 2011 meter read dates.

This RFP is based on pricing strategies and approaches provided by bidders, not on price. The Compact is inviting bidders to provide proposals outlining their approach and strategy. The pricing approach proposed should be based on prices that change every six months for residential and small commercial/industrial accounts and prices that change every three months for medium/large commercial/industrial accounts. The Compact is seeking proposals that will provide not only competitive prices when compared with the local distribution company, but also proposed incentives if pricing can be fixed below the local distribution company’s prices. The Compact is seeking proposals which will provide the Compact with innovative pricing approaches and transparency between the Compact and the selected bidder. The Compact and the selected bidder will work together to execute the selected pricing approach. The Compact is seeking a bidder that will become a valued collaborator with the goal of providing benefits to all Accounts on Cape Cod and Martha’s Vineyard.

The selected bidder must execute a Competitive Electric Supply Agreement (“CESA”), as supplied or amended, for the provision of all-requirements retail power supply, the forms of which are available for bidder review as set forth below.

2. General Provisions

2.1. Request for Proposals Schedule

- Request for Proposals issued Monday, March 1, 2010
- Confidentiality Agreement executed by bidder on Thursday, March 11, 2010
- Questions from bidders due by 2:00 pm on Wednesday, March 17, 2010
- Responses to bidder questions due from the Compact by close of business Monday, March 22, 2010
- Bidder proposals due by noon on Thursday, April 1, 2010
- Potential bidder interviews on Wednesday, April 7, 2010
- Potential bidder interviews on Thursday, April 8, 2010
- Bidder selection by Friday, April 16, 2010

2.2. Contact Information

Inquiries concerning this RFP must be submitted in writing or by electronic mail to:

Cape Light Compact RFP for All-Requirements Retail Electric Power Supply
Attn: Margaret T. Downey
Administrator/Chief Procurement Officer
3195 Main Street, Superior Court House
Barnstable, MA 02630(508) 362-4136 (fax)
mdowney@barnstablecounty.org

Inquiries may be hand-delivered, mailed, e-mailed, or faxed, but must be received by 2:00 p.m. Eastern Time on Wednesday, March 17, 2010. Telephone or other such inquiries will not be answered. Written responses will be e-mailed or faxed to all bidders on record as having submitted the Confidentiality Agreement (see Section 2.3) by Monday, March 22, 2010. Bidders should not contact Compact officers, directors, employees, counsel or technical consultants regarding this RFP prior to the Compact’s acceptance of a bid under this RFP.

2.3. Confidentiality Agreement

Bidders must execute and submit the Confidentiality Agreement attached to this RFP as Appendix A. The bidder will not be eligible to submit proposals until such agreements have been executed and received at the address provided in Section 2.2.

2.4. Proposal Submission Date

Proposals must be received by noon Eastern Time on Thursday, April 1, 2010. Proposals must be sealed and clearly marked “**ALL-REQUIREMENTS RETAIL ELECTRIC POWER SUPPLY**”. No responsibility shall be attached to any person or persons for the premature openings of proposals not properly marked.

Proposals must be submitted to:

Cape Light Compact RFP for All-Requirements Retail Electric Power Supply
Attn: Margaret T. Downey
Administrator/Chief Procurement Officer
3195 Main Street, Superior Court House
Barnstable, MA 02630

One original Proposal and three copies must be delivered in hard copy and one must be submitted in electronic form. Any supporting documents must be attached in both hard copy and electronic form. Any proposal submitted and not complete at that time in the format specified in this RFP will not be considered.

2.5. Modification/Withdrawal of Proposals

Proposals are final once submitted. Modifications or withdrawals of proposals are not permitted once they have been submitted.

2.6. Terms of Submission

All proposals will be considered an offer to provide supplies and services to the Compact's Accounts.

2.7. Sole Discretion

The Compact reserves the sole discretion unto itself to (i) modify or amend any term in this RFP, including but not limited to, any date contained in Section 2.1; and (ii) determine whether to pursue competitive all-requirements retail electric power supply prior to selecting a winning bidder.

3. Services Requested

3.1. All-Requirements Retail Electric Power Supply

The Compact is requesting proposals for delivery of all-requirements retail electric power supply. All-requirements retail electric power supply generally includes, but may not be limited to, electrical energy; capacity; ancillary services; renewable energy resources as mandated by G.L. c. 25A, §11F and any regulations, orders or policies adopted pursuant thereto; transmission and distribution losses; and transmission service. The specific definition of all-requirements power supply and associated responsibilities are stated in the CESA, which will be provided to bidders upon receipt of a signed Confidentiality Agreement (see Section 2.3).

A supplier of all-requirements retail power supply will be responsible for all load and supply scheduling, scheduling of network and other transmission service, and all other transactions and communications with ISO New England and the New England Power Pool necessary for the delivery of firm power supply to the Accounts. In addition, a supplier of all-requirements retail power supply will be obligated to provide all services, directly or through contract, in order for the local distribution company to be able to bill customers; handle customer complaints and service calls; arrange all EDI and other functions and otherwise provide competitive supply to end-use customers.

A supplier of all-requirements retail power supply will have an obligation to serve all load for Accounts, including any changes in demand associated with these Accounts for any reason whatsoever. Electric account information for all the Accounts will be provided by NSTAR to bidders upon receipt of the signed Confidentiality Agreement (see Section 2.3).

3.2. Term

Delivery of all-requirements retail electric power must commence on the January 2011 meter read dates for each account. The Compact anticipates that the contract for all-requirements retail electric power supply will be for a term of three (3) years, with the option to renew for an additional two years.

4. Proposal Format

4.1. Qualifications

Proposals must include the following information:

- a. Contact(s). Name, business address, phone number, fax number, and e-mail address for the principal officer responsible for submission of the proposal and for the principal officer responsible for administration of the contract, and statement that the principal officer responsible for execution of the CESA has the authority to act on behalf of, and to bind, the bidder to perform the terms and conditions of the CESA.
- b. Business Information. Legal trade name; date of incorporation or organization; state of incorporation or organization; list of officers and directors; list of affiliates, if any; a copy of previous two years of Annual Reports to Stockholders, or other audited annual report; copies of final year-end FERC Form 1 filings for 2008 and 2009, if applicable; current bond rating(s) by Moody's Investor Services, or other rating agencies, if applicable; latest audited financial statement(s) with confirmation of no material or adverse changes since the date of statement(s).
- c. Business Qualifications. Registration from the Executive Office of Energy and Environmental Affairs as a competitive supplier in Massachusetts; New England Power Pool membership; certification of other regulatory approvals necessary to provide all-requirements power supply; Certificate of Good Standing from the Massachusetts Department of Revenue, or similar certification that all state taxes have been paid in state of incorporation or organization, if applicable; evidence of qualification to do business in Massachusetts, if applicable.
- d. Business Status. Statement as to whether or not business or affiliate has commenced, or been forced into, any insolvency proceeding within the last five (5) years; statement as to whether business or affiliate has been subject to any investigation by a state or federal agency within the last five (5) years; statements as to the number, if any, of consumer complaints filed with a state, federal, or local agency, against the business or affiliate within the last five (5) years.

4.2. Proposal Expiration

This RFP is based on pricing strategies and approaches provided by bidders, not on price. Proposals will be deemed valid from submission through April 16, 2010. At its sole discretion, the Compact may opt to negotiate with multiple bidders, as shall be considered in the best interest of the Compact.

5. Supply Agreement

Forms of the CESA, as applicable, to be executed as a result of this RFP, will be provided to bidders upon receipt of a signed Confidentiality Agreement (see Section 2.3). These

supply agreements contain the parties' rights and obligations for providing and receiving all-requirements retail electric power supply.

Bidders may propose amendments to the CESA as part of their response to the RFP. Bidders must describe in detail any proposed amendments to the CESA.

6. Load Data

Load data will be provided by the Compact and NSTAR to bidders that have submitted a signed Confidentiality Agreement (see Section 2.3). Wholesale hourly load data and retail sales data will be provided by the Compact. NSTAR will provide load data relative to the time of use accounts through the electronic data protocols currently in place between suppliers and NSTAR. The Compact makes no representations whatsoever as to the accuracy or completeness of the load data which will be provided by the Compact or NSTAR. Bidders are expressly cautioned that they must independently test and/or verify such data to the extent they believe appropriate. The Compact assumes no duties or responsibilities to check, update, or otherwise assess the data provided.

7. Evaluation of Proposals

The Compact may choose more than one proposal from responsive and responsible bidders for further consideration and evaluation. Proposals that are incomplete, not properly endorsed, or signed, or which are otherwise contrary to these instructions may be rejected as non-responsive by the Compact. Conditional proposals will not be accepted.

The Compact will negotiate the form of amendments to the CESA, if any, with each of the selected bidders. The Compact, in its sole discretion, will select the winning proposal based on the strategy and approach to pricing provided by the bidder, the terms of the modified CESA, if any, and other factors described in this RFP.

8. Notification of Award

Any contract resulting from this RFP shall be deemed as having been awarded when formal written notice of acceptance of the proposal has been duly served on the successful bidder.

Appendix A

Confidentiality Agreement For All-Requirements Retail Electric Power Supply For Accounts

between

THE CAPE LIGHT COMPACT

and

_____ [Company]¹

This CONFIDENTIALITY AGREEMENT (“Agreement”) is entered into by and between the Cape Light Compact and _____, a _____ **[insert jurisdiction and state of organization]** (the “Company”), and is effective as of the date of execution by the Company as set forth below.

WHEREAS, pursuant to G. L. c. 40, § 4A, the towns of Aquinnah, Barnstable, Bourne, Brewster, Chatham, Chilmark, Dennis, Edgartown, Eastham, Falmouth, Harwich, Mashpee, Oak Bluffs, Orleans, Provincetown, Sandwich, Tisbury, Truro, West Tisbury, Wellfleet, and Yarmouth, and the counties of Barnstable and Dukes County (collectively, the “Members”) entered into an inter-governmental agreement to act together as the Cape Light Compact (the “Compact”);

WHEREAS, the Compact, through its agent, Barnstable County, issued a request for proposals for all-requirements competitive retail power supply for the residential, small commercial/industrial, and medium and large commercial/industrial accounts (the “Accounts”) of the Members of the Compact (the “RFP”).

WHEREAS, the Compact, for itself and for its Members, desires to supply certain confidential information to the Company so that the Company may submit a proposal in response to the RFP;

WHEREAS, the Company may also disclose certain confidential information in its proposal; and

WHEREAS, the parties desire to maintain the confidentiality of such information to the greatest extent allowed by law.

NOW THEREFORE, the parties hereby agree and state as follows:

¹ Bidders: Please type in your company name and other company information where appropriate.

1. *Confidential Information.* The term “Confidential Information” means all trade secrets or confidential, competitively sensitive or other proprietary information provided by either party in connection with the RFP and/or the execution or performance of the Competitive Electric Supply Agreement that the parties may enter into (the “Energy Activity”), whether disclosed directly or indirectly, in writing or orally, and which, if in tangible form, is marked by the disclosing party with the words “Confidential” or “Proprietary” or marking of similar import, or if disclosed orally, is identified as confidential at the time of disclosure and in a written notice delivered to the nondisclosing party promptly following disclosure. Confidential Information also includes customer account load data which is being made available to bidders from NSTAR in connection with the RFP (the “Confidential Load Data”). Confidential Information does not include:

- (i) information already in the possession of the nondisclosing party at the time of disclosure by the disclosing party, as long as such information was not provided by the disclosing party;
- (ii) information that is now or later becomes publicly available, unless such information becomes publicly available as a result of any action or inaction on the part of the nondisclosing party;
- (iii) information received by the nondisclosing party from a third party, unless such third party was under a duty of confidentiality with respect to such information;
- (iv) information for which disclosure is required under the Massachusetts Public Records Act, including without limitation, G. L. c. 4, §7, cl. 26 and G. L. c. 66, §10; or
- (v) information that is not designated or identified by the disclosing party as “Confidential” or “Proprietary” at the time of its initial submission. Such information shall be presumptively subject to disclosure under the Public Records Act.

2. *Use of Confidential Information.* The parties shall use the Confidential Information exclusively in connection with the Energy Activity. Each party shall receive all Confidential Information in strict confidence and shall protect the Confidential Information against disclosure using the same degree of care, but no less than a reasonable degree of care, that each party uses to protect its own confidential information.

3. *Disclosure to Third Parties.* The nondisclosing party agrees that it will not disclose any Confidential Information to any third party without the prior written consent of the disclosing party. After having obtained the written consent of the disclosing party, the nondisclosing party agree(s) that it will: (i) advise the third party of the terms of this Agreement; (ii) advise such party that it will be bound by the terms of this Agreement; and (iii) have such party execute a Non-Disclosure Certificate in the form attached to this Agreement as Exhibit A. The nondisclosing party may disclose Confidential Information only to consultants and contractors and other agents of the nondisclosing party who execute Non-Disclosure Certificates.

4. *Ownership of Confidential Information; No Implied License or Warranty.* Each party acknowledges that it has no ownership or proprietary rights in the disclosing party's Confidential Information, and that the Confidential Information is the sole property of the disclosing party. Nothing in this Agreement will be construed as granting as rights to the receiving party by license or otherwise, to any of the disclosing party's Confidential Information, except as specifically stated in this Agreement. Neither party makes any warranty or guaranty as to the accuracy of Confidential Information disclosed hereunder, nor is any assurance provided that Confidential Information is fit for any particular intended use or purpose. Each party shall rely on Confidential Information only at its own risk.

5. *Notes, Copies and Abstracts.* To the extent necessary to carry out the Energy Activity, the receiving party may make notes, copies or abstracts of the Confidential Information, provided that all such notes, copies and abstracts themselves are marked as confidential and provided that the receiving party maintains a written record of the distribution of all such copies and abstracts.

6. *Return of Confidential Information.* Within fourteen days of receiving notice that it is not the winning bidder, the Company will return to the Compact all copies of Confidential Information, and will destroy all notes, copies, abstracts, documents, computer files and other media that contain Confidential Information, and will provide to the Compact a written certification of an officer of the receiving party that it has done so. If the Company is the winning bidder, within fourteen (14) days after the Company has ceased to provide services to the Compact, the Company will return to the Compact all copies of Confidential Information, and will destroy all notes, copies, abstracts, documents, computer files and other media that contain Confidential Information, and will provide to the Compact a written certification of an officer of the receiving party that it has done so. If requested in writing, the Compact will return any Confidential Information received from any bidder (including the winning bidder), upon expiration of the relevant document retention period under Massachusetts Law. Each party agrees that upon the return of the Confidential Information, it shall continue to be bound by the terms of this Agreement.

7. *Scope of Agreement.* This Agreement is binding upon the employees, officers, directors, agents, representatives, attorneys, contractors and consultants and affiliates of each party. The Company understands and agrees that certain Confidential Information disclosed by the Compact may be owned by its Members and that the Compact is disclosing such information in its role as agent for the Members. The Company understands and agrees that such information shall be entitled be treated as Confidential Information under this Agreement.

8. *Consent of the Disclosing Party.* As to any instance under this Agreement whereby the nondisclosing party is required to obtain the consent of the disclosing party prior to taking certain actions, the disclosing party reserves the right to withhold consent for any reason.

9. *Term.* This Agreement shall become effective when executed by both parties and shall continue in effect until either: (i) in the event that the Company is the successful bidder, two (2)

years after the Company has ceased to provide services to the Compact, or until sooner terminated by the written agreement of both parties hereto, or (ii) the event that the Company is not the successful bidder, two years after termination of the solicitation process. The obligations of confidentiality contained herein shall survive and continue following the expiration or termination of this Agreement, unless otherwise agreed to in writing by both parties hereto.

10. *Required Disclosures.* Anything in this Agreement to the contrary notwithstanding, the nondisclosing party may disclose Confidential Information to the extent that it is required to do so by law, a court, or other governmental or regulatory authorities; provided, however, that the nondisclosing party shall give the disclosing party written notice of such a required disclosure prior to making such disclosure so that the disclosing party may seek a protective order or other relief with respect to such Confidential Information, and shall limit the disclosure to the minimum required to comply with the law, court order, or governmental or regulatory authority. Company acknowledges that the Compact and its Members are subject to public records laws, including without limitation, G. L. c. 4, §7, cl. 26 and G. L. c. 66, §10.

11. *Representations and Warranties.* The Compact hereby represents and warrants to the Company as follows: (i) the Compact shall use the Confidential Information only in connection with the Energy Activity; (ii) this Agreement constitutes the legal, valid and binding obligation of the Compact enforceable in accordance with its terms; and (iii) the Compact has taken all necessary action to authorize and approve the execution and delivery of this Agreement and the performance of the obligations hereunder. The Company hereby represents and warrants to the Compact as follows: (i) the Company shall use the Confidential Information only in connection with the Energy Activity; (ii) this Agreement constitutes the legal, valid and binding obligation of the Company enforceable in accordance with its terms; and (iii) the Company has taken all necessary action to authorize and approve the execution and delivery of this Agreement and the performance of the obligations hereunder. The representations and warranties contained in this Agreement shall survive execution and delivery of this Agreement.

12. *Governing Law; Enforcement; Liquidated Damages for Certain Breaches.* The validity, construction and performance of this Agreement shall be governed by the laws of the Commonwealth of Massachusetts without regard to its choice of law rules. The parties agree that venue for judicial enforcement of this Agreement shall be Barnstable County Superior Court. The parties acknowledge and agree that the extent of damage to the disclosing party in the event of a breach by the nondisclosing party of any of the covenants contained in this Agreement will be difficult or impossible to ascertain and that there may be no adequate remedy at law available to the disclosing party. The parties therefore agree that, in the event of such breach, the disclosing party, in addition to receiving damages for breach, shall be entitled to enforce any and all of the covenants contained in this Agreement by injunctive or other equitable relief. In addition, in the event of disclosure of Confidential Load Data in violation of this Agreement, the Company shall pay the Compact fifty thousand dollars (\$50,000.00) as liquidated damages. The sum is agreed upon as liquidated damages and not as a penalty. The parties hereto have computed, estimated, and agreed upon the sum as an attempt to make a reasonable forecast of

probable actual loss of the Compact's competitive advantage because of the difficulty of estimating with exactness the damages which will result.

13. *Notices.* Except for any notice required by law to be given in another manner, all notices, waivers, demands, or other communications required or permitted by this Agreement to be effective shall be in writing, properly addressed, and shall be given by: (i) personal delivery; (ii) established overnight commercial courier delivery service, with charges prepaid or duly charged by the sender; or (iii) registered or certified mail, return receipt requested, first class, postage prepaid and addressed as follows:

FOR THE COMPACT:

Margaret T. Downey, Administrator/Chief Procurement Officer
Cape Light Compact
P.O. Box 427
3195 Main Street
Barnstable, MA 02630
(508) 375-6636 (phone)
(508) 362-4136 (facsimile)
mdowney@barnstablecounty.org (email)

FOR THE COMPANY:

[insert contact information]

With a copy to:

[insert contact information]

Any party may additionally provide notice by electronic mail, facsimile, or telephone communication, but this shall not relieve the party of the obligation to provide notice as specified above.

14. *Waiver.* No waiver of any provision of this Agreement shall be effective unless in writing and signed by the party against whom such waiver is sought to be enforced. No failure or delay by any party to insist upon strict compliance with any term of this Agreement shall be deemed a waiver of such term. No waiver or relinquishment of any right under this Agreement at any one or more times shall be deemed as a waiver or relinquishment of such power or right at any other time.

15. *Assignment; Successors and Assigns.* No party may assign any of its rights or delegate any of its obligations under this Agreement to any third party without the prior written consent of the other party. This Agreement shall be binding upon and inure to the benefit of the successors and permitted assigns of the parties hereto.

16. *Entire Agreement; Amendments.* This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior oral or written agreements and understandings between the parties relating to the subject matter hereof. This Agreement may only be amended or modified by a written instrument signed by both parties hereto.

17. *Further Agreements.* Nothing contained in this Agreement shall be deemed, by implication or otherwise, to convey to the nondisclosing party any rights in any Confidential Information, nor shall this Agreement be deemed a commitment of any kind by the Compact or the Company to enter into any further agreements with respect to any Confidential Information.

18. *Severability.* If any of the provisions of this Agreement shall be adjudged by a court of competent jurisdiction to be void or unenforceable for any reason, the same shall in no way affect the validity or enforceability of any other provision of this Agreement to the maximum extent permissible by law.

19. *No Joint Venture.* Nothing in this Agreement is intended or shall be deemed to make the Compact a partner or joint venturer of the Company.

20. *Counterpart Execution; Scanned Copy.* This Agreement may be executed in several counterparts, each of which, when executed, shall be deemed to be an original, but all of which together shall constitute one and the same instrument. The parties agree that a scanned or electronically reproduced copy or image of this Agreement bearing the signatures of the parties hereto shall be deemed an original and may be introduced or submitted in any action or proceeding as competent evidence of the execution, terms and existence of this Agreement notwithstanding the failure or inability to produce or tender an original, executed counterpart of this Agreement and without the requirement that the unavailability of such original, executed counterpart of this Agreement first be proven.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the dates written below.

FOR THE COMPACT:

FOR THE COMPANY:

Name: Margaret T. Downey
Title: Administrator/Chief Procurement Officer
As authorized by the Barnstable County Commissioners
Dated: _____

Name:
Title:
Dated:_____

EXHIBIT A

NON-DISCLOSURE CERTIFICATE

I hereby certify my understanding that the Confidential Information, as that term is defined in the Confidentiality Agreement between the Cape Light Compact and the [Company] dated _____, 2010 (the "Agreement"), is being provided to me pursuant to the terms and restrictions of the Agreement. I also certify that I have been given a copy of the Agreement, have read its terms and conditions, and agree to be bound by them. I understand that the contents of the Confidential Information and any parts of notes, abstracts, memoranda, or any other form of information that contains such Confidential Information shall not be disclosed to anyone nor copied other than in accordance with the Agreement, and shall be used only for the limited purposes stated therein. I also agree to protect the confidential and proprietary nature asserted for the Confidential Information.

I further acknowledge that, in the event that my role as a _____ of [the Company] ceases, I shall return all copies of Confidential Information and destroy all parts of notes, memoranda, and other documents that contain such material in accordance with the Agreement, and I shall continue to be bound by the terms and conditions of the Agreement.

By: _____

Name: _____

Title: _____

Organization: _____

Representing: _____

Date: _____