

2008 ComEd RFP

For Electric Supply & Renewable Energy Products

UNACCEPTABLE Modifications to Pre-Bid Letters of Credit: FINAL

February 27, 2008

The Standard Pre-Bid Letter of Credit is included as Appendix 6 of the RFP Rules. An RFP Bidder that submits modifications to the Standard Pre-Bid Letter of Credit will receive a review within two (2) business days. The RFP Bidder can only submit once a single request for modifications. Any review of these proposed modifications is final and without appeal.

This document contains a comprehensive set of all modifications to the Standard Pre-Bid Letter of Credit that are NOT acceptable to ComEd.

Paragraph 1 - Original

1. We, _____(the "Issuing Bank"), hereby establish this Irrevocable Standby Letter of Credit (this "Letter of Credit") in your favor in the amount of USD \$_____, effective immediately and available to you at sight upon demand at our counters at _____[designate Issuing Bank's location for presentments] and expiring at 5:00 PM (New York, NY time¹) on _____[no earlier than eight business days after the Bid Date] (the "Expiration Date"), unless terminated earlier in accordance with the provisions of Paragraph 9 hereof.

¹ If the issuer of the Letter of Credit is located in an area that is not in the Eastern time zone, this time and all other times in this Letter of Credit, and the definition of a Business Day should be adjusted accordingly, here and in Paragraphs 5 and 9.

Paragraph 2 - Original

2. This Letter of Credit is issued at the request and for the account of _____ (including its successors and assigns, the "Bidder"). This Letter of Credit may be drawn by presenting the documents required by paragraph 3 hereof, including your certificate stating that:
- a) "the Bidder has made a material omission or misrepresentation in the Part 1 Proposal or the Part 2 Proposal submitted in connection with the 2008 ComEd Standard Products RFP"; or
 - b) "the Bidder has disclosed information relating to its Proposal publicly or to any other party before the ICC has rendered its decision on the results of the procurement event"; or
 - c) "the Bidder has won one or more blocks and has failed to execute all Confirmations in the timeframe required by the Master Agreement".

Unacceptable Modifications to Paragraph 2

2. This Letter of Credit is issued at the request and for the account of _____ (including its successors and ~~assigns~~ transferees, the "Bidder"). This Letter of Credit may be drawn by presenting the documents required by paragraph 3 hereof, including your certificate stating that:
- a) "the Bidder has made a material omission or misrepresentation in the Part 1 Proposal or the Part 2 Proposal submitted in connection with ~~the that certain~~ 2008 ComEd Standard Products RFP"; or
 - b) "the Bidder has disclosed information relating to ~~its certain~~ Proposal publicly or to any other party before the ICC has rendered its decision on the results of the procurement event"; or
 - c) "the Bidder has won one or more blocks and has failed to execute all Confirmations in the timeframe required by ~~the that certain~~ Master Agreement".

Paragraph 3 - Original

3. We hereby irrevocably authorize you to draw on us, in accordance with the terms and conditions hereof, up to the amount available under this Letter of Credit from time to time, subject to reduction as provided in Paragraph 8. A partial or full drawing hereunder may be presented by you on any Business Day on or prior to the Expiration Date by delivering or transmitting to the Issuing Bank at _____ [U.S. address], (a) a notice executed by you substantially in the form of Annex 1 hereto, appropriately completed and duly signed by an Authorized Officer of ComEd, and (b) your draft substantially in the form of Annex 2 hereto, appropriately completed and duly signed by an Authorized Officer of ComEd.

Paragraph 4 - Original

4. Drafts, document(s) and other communications hereunder may be presented or delivered to us by facsimile transmission. Presentation of documents to effect a draw by facsimile must be made to the following facsimile number: _____, and confirmed by telephone to us at the following number: _____. In the event of a presentation via facsimile transmission, no mail confirmation is necessary and the facsimile transmission will constitute the operative drawing documents.

Unacceptable Modifications to Paragraph 4

4. ~~Drafts, document(s) and other communications hereunder may be presented or delivered to us by facsimile transmission. Presentation of documents to effect a draw by facsimile must be made to the following facsimile number: _____, and confirmed by telephone to us at the following number: _____. In the event of a presentation via facsimile transmission, no mail confirmation is necessary and the facsimile transmission will constitute the operative drawing documents.~~ [Space intentionally left blank]

Paragraph 5 - Original

5. We will honor a drawing hereunder made in compliance with the terms and provisions of this Letter of Credit by transferring in immediately available funds the amount specified in your draft (or so much thereof as is available hereunder) delivered or transmitted to us in connection with such drawing to the account designated as provided below, by 3:00 PM (New York, NY time) on the date of such drawing, if delivery or transmission of the requisite documents pursuant to Paragraph 3 hereof is made prior to 11:00 AM (New York, NY time) on a Business Day, but at the opening of business on the first Business Day next succeeding the date of such drawing if delivery or transmission of the requisite documents pursuant to Paragraph 3 hereof is made on or after 11:00 AM (New York, NY time) on any Business Day.

Unacceptable Modifications to Paragraph 5

5. We will honor a drawing hereunder made in compliance with the terms and provisions of this Letter of Credit by transferring in immediately available funds the amount specified in your draft (or so much thereof as is available hereunder) delivered or transmitted to us in connection with such drawing to the account designated as provided below, by ~~3:00~~12:00 PM (New York, NY time) on the first Business Day next succeeding the date of such drawing, if delivery or transmission of the requisite documents pursuant to Paragraph 3 hereof is made prior to 11:00 AM (New York, NY time) on a Business Day, but ~~at the opening of business by 9:00 AM~~ on the ~~first~~second Business Day next succeeding the date of such drawing if delivery or transmission of the requisite documents pursuant to Paragraph 3 hereof is made on or after 11:00 AM (New York, NY time) on any Business Day.
5. We will honor a drawing hereunder made in compliance with the terms and provisions of this Letter of Credit by transferring in immediately available funds the amount specified in your draft (or so much thereof as is available hereunder) delivered ~~or transmitted~~ to us in connection with such drawing to the account designated as provided below, by 3:00 PM (New York, NY time) on the date of such drawing, if delivery ~~or transmission~~ of the requisite documents pursuant to Paragraph 3 hereof is made prior to 11:00 AM (New York, NY time) on a Business Day, but at the opening of business on the first Business Day next succeeding the date of such drawing if delivery ~~or transmission~~ of the requisite documents pursuant to Paragraph 3 hereof is made on or after 11:00 AM (New York, NY time) on any Business Day.
5. We will honor a drawing hereunder made in compliance with the terms and provisions of this Letter of Credit by transferring in immediately available funds the amount specified in your draft (or so much thereof as is available hereunder) delivered to us in connection with such drawing to the account designated as provided below, by 3:00 PM (New York, NY time) on the third succeeding date of such drawing, if delivery of the requisite documents pursuant to Paragraph 3 hereof is made prior to 11:00 AM (New York, NY time) on a Business Day, but at the opening of business on the ~~first~~fourth Business Day next succeeding the date of such drawing if delivery of the requisite documents pursuant to Paragraph 3 hereof is made on or after 11:00 AM (New York, NY time) on any Business Day.

Paragraph 6 - Original

6. If a demand for payment made by you hereunder does not, in any instance, conform to the terms and conditions of this Letter of Credit, we shall give you notice not later than the time provided in Paragraph 5 above for honor of a drawing presented to us, that the demand for payment was not effected in accordance with the terms and conditions of this Letter of Credit, stating the reasons why the demand for payment was not so effected, and that we will upon your instructions hold any documents at your disposal or return the same to you. Upon being notified that the demand for payment was not effected in conformity with this Letter of Credit, you may attempt to correct any such non-conforming demand for payment to the extent that you are entitled to do so, provided, however, in such event a conforming demand for payment must be timely made in accordance with the terms of this Letter of Credit.

Unacceptable Modifications to Paragraph 6

6. If a demand for payment made by you hereunder does not, in any instance, conform to the terms and conditions of this Letter of Credit, we shall give you notice ~~not later than the time provided in Paragraph 5 above for honor of a drawing presented to us,~~ that the demand for payment was not effected in accordance with the terms and conditions of this Letter of Credit, stating the reasons why the demand for payment was not so effected, and that we will upon your instructions hold any documents at your disposal or return the same to you. Upon being notified that the demand for payment was not effected in conformity with this Letter of Credit, you may attempt to correct any such non-conforming demand for payment to the extent that you are entitled to do so, provided, however, in such event a conforming demand for payment must be timely made in accordance with the terms of this Letter of Credit.

Paragraph 7 - Original

7. Unless otherwise hereafter designated in writing to us by an Authorized Officer of ComEd, all payments made by us under this Letter of Credit shall be transmitted by wire transfer to ComEd pursuant to the following instructions:

Commonwealth Edison Company

Account No.: _____

Bank: _____

Bank's Address: _____

ABA Routing No.: _____

Contact: _____

Telephone No.: _____

Paragraph 8 - Original

8. Partial drawings are permitted hereunder and multiple drawings are permitted hereunder. The amount available for drawing by you under this Letter of Credit shall be automatically reduced by the amount of any drawings paid through us referencing this Letter of Credit. Presentation of demands for drawings in amounts that exceed the amount available to be drawn hereunder shall not be deemed a failure to comply with the requirements of Paragraph 3 hereof, provided that the amounts payable on any such demand shall thus be limited to the amount then available to be drawn under this Letter of Credit.

Paragraph 9 - Original

9. This Letter of Credit shall terminate on the earliest of the date (a) you have made drawings which exhaust the amounts available to be drawn under this Letter of Credit, (b) we receive from you a Certificate of Cancellation in the form of Annex 3 hereto together with the original of this Letter of Credit returned for cancellation, or (c) 5:00 PM (New York, NY time) on the Expiration Date.

Paragraph 10 - Original

10. This Letter of Credit is not transferable, and except as otherwise expressly stated herein, is subject to the Uniform Customs and Practices for Documentary Credits - 2007 revision, ICC Publication No. 600, or any successor publication thereto (the "UCP"). All banking charges are for the account of the Bidder. This Letter of Credit shall, as to matters not governed by the UCP, be governed and construed in accordance with New York law, without regard to principles of conflicts of law.

Unacceptable Modifications to Paragraph 10

10. This Letter of Credit is not transferable, and except as otherwise expressly stated herein, is subject to the Uniform Customs and Practices for Documentary Credits - 2007 revision, ICC Publication No. 600, or any successor publication thereto (the "UCP"). All banking charges are for the account of the Bidder. This Letter of Credit shall, as to matters not governed by the UCP, be governed and construed in accordance with New York law, ~~without regard to principles of conflicts of~~ law.

Paragraph 11 - Original

11. Article 36 of the UCP as it applies to this Letter of Credit is hereby modified to provide as follows:

If on the last Business Day for presentation the place for presentation stated in this Letter of Credit is for any reason closed, then the last day for presentation is automatically extended to the day occurring thirty calendar days after the place for presentation re-opens for business.

Article 36 of the UCP as it applies to this Letter of Credit is hereby further modified by providing that any alternate place for presentation we may designate pursuant to this rule must be in the United States.

Unacceptable Modifications to Paragraph 11

11. Article 36 of the UCP as it applies to this Letter of Credit is hereby modified to provide as follows:

If on the last Business Day for presentation the place for presentation stated in this Letter of Credit is for any reason closed, then the last day for presentation is automatically extended to the day occurring thirty calendar days after the place for presentation re-opens for business.

~~Article 36 of the UCP as it applies to this Letter of Credit is hereby further modified by providing that any alternate place for presentation we may designate pursuant to this rule must be in the United States.~~

Paragraph 12 - Original

12. As used herein:

"Authorized Officer" shall mean President, Treasurer, any Vice President or Senior Vice President or any Assistant Treasurer.

"Bid Date" shall mean the last day on which the Bidder may submit Bids in the 2008 ComEd Standard Products RFP.

"Bidder" shall mean an entity that has successfully completed the Part 1 Proposal, that and submits the Part 2 Proposal.

"Business Day" shall mean any day on which commercial banks are not authorized or required to close in New York, NY and any day on which payments can be effected on the Fedwire system.

"Master Agreement" shall mean the Master Power Purchase and Sale Agreement by which ComEd can contract for supply with winners from the 2008 ComEd Standard Products RFP.

Unacceptable Modifications to Paragraph 12

12. As used herein:

"Authorized Officer" shall mean President, Treasurer, any Vice President or Senior Vice President or any Assistant Treasurer.

"Bid Date" shall mean the last day on which the Bidder may submit Bids in the 2008 ComEd Standard Products RFP.

"Bidder" shall mean an entity that has successfully completed the Part 1 Proposal, that and submits the Part 2 Proposal.

"Business Day" shall mean any day on which commercial banks are not authorized or required to close in New York, NY and [City, State] and any day on which payments can be effected on the Fedwire system.

"Master Agreement" shall mean the Master Power Purchase and Sale Agreement by which ComEd can contract for supply with winners from the 2008 ComEd Standard Products RFP.

12. As used herein:

"Authorized Officer" shall mean President, Treasurer, any Vice President or Senior Vice President or any Assistant Treasurer.

"Bid Date" shall mean the last day on which the Bidder may submit Bids in the 2008 ComEd Standard Products RFP.

"Bidder" shall mean an entity that has successfully completed the Part 1 Proposal, that and submits the Part 2 Proposal.

"Business Day" shall mean any day on which commercial banks are not authorized or required to close in New York, NY or [City, State] and any day on which payments can be effected on the Fedwire system.

"Master Agreement" shall mean the Master Power Purchase and Sale Agreement by which ComEd can contract for supply with winners from the 2008 ComEd Standard Products RFP.

12. As used herein:

"Authorized Officer" shall mean President, Treasurer, any Vice President or Senior Vice President or any Assistant Treasurer.

~~"Bid Date" shall mean the last day on which the Bidder may submit Bids in the 2008 ComEd Standard Products RFP.~~

~~"Bidder" shall mean an entity that has successfully completed the Part 1 Proposal, that and submits the Part 2 Proposal.~~

"Business Day" shall mean any day on which commercial banks are not authorized or required to close in New York, NY and any day on which payments can be effected on the Fedwire system.

~~"Master Agreement" shall mean the Master Power Purchase and Sale Agreement by which ComEd can contract for supply with winners from the 2008 ComEd Standard Products RFP.~~

Paragraph 13 - Original

13. This Letter of Credit sets forth in full our undertaking, and such undertaking shall not in any way be modified, amended, changed, amplified or limited by reference to any document, instrument or agreement referred to herein, except for Annexes 1 through 3 hereto and the notices referred to herein; and any such reference shall not be deemed to incorporate herein by reference any document, instrument or agreement except as set forth above. Except as otherwise expressly stated herein, this Letter of Credit may not be amended or modified by us without the consent of an Authorized Officer of the Procurement Administrator.

Paragraph 14 - Original

14. We, the Issuing Bank, certify that as of the Date of Issuance our senior unsecured debt is rated "A" or better by Standard & Poor's, or "A2" or higher from Moody's Investors Service.

Unacceptable Modifications to Paragraph 14

14. ~~We, the Issuing Bank, certify that as of the Date of Issuance our senior unsecured debt is rated "A" or better by Standard & Poor's, or "A2" or higher from Moody's Investors Service.~~

Paragraph 15 - Original

15. This original Letter of Credit has been sent to the Procurement Administrator at 70 West Madison Street, Suite 680, Chicago, IL 60602 (as per Bidder's instructions, the Procurement Administrator holds the Letter of Credit for the benefit of ComEd). The aggregate amount paid to ComEd during the validity of this Letter of Credit will not exceed the amount of this Letter of Credit. Any demands or communications in the form of the attached Annexes or other communications directed to us under this Letter of Credit must be signed by an Authorized Officer of ComEd. Acceptance or rejection of any amendments to this Letter of Credit must be signed by an Authorized Officer of ComEd or an Authorized Officer of the Procurement Administrator on behalf of ComEd.

Unacceptable Modifications to Paragraph 15

15. This original Letter of Credit has been sent to the Procurement Administrator at 70 West Madison Street, Suite 680, Chicago, IL 60602 (as per Bidder's instructions, the Procurement Administrator holds the Letter of Credit for the benefit of ComEd). The aggregate amount paid to ComEd during the validity of this Letter of Credit will not exceed the amount of this Letter of Credit. Any demands or communications in the form of the attached Annexes or other communications directed to us under this Letter of Credit must be signed by an Authorized Officer of ComEd. ~~Acceptance or rejection of any amendments to this Letter of Credit must be signed by an Authorized Officer of ComEd or an Authorized Officer of the Procurement Administrator on behalf of ComEd.~~