

**Bidding Rules for the  
FirstEnergy Ohio Utilities’  
Percentage of Income Payment Plan  
 (“PIPP”) Request for Proposals  
 (“RFP”)**

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## 1. INTRODUCTION

These Bidding Rules apply to the requests for proposals (“RFPs”) for The Cleveland Electric Illuminating Company, The Toledo Edison Company, and Ohio Edison Company (hereafter referred to as “the FirstEnergy Ohio Utilities” or “the Companies”) to procure competitive retail electric service for percentage of income payment plan (“PIPP”) program customers of the FirstEnergy Ohio Utilities.

In addition to this document, participants also need to be familiar with other documents for the RFPs including the Master Percentage of Income Payment Plan Supply Agreement (“Master PIPP Supply Agreement”), the PIPP Supplier Application, the Communications Protocols, and the Glossary. Participants also should visit the Information Website regularly for up-to-date information including information specific to each RFP.

The URL for the Information Website is <http://www.firstenergyPIPPRFP.com> (not case-sensitive). It contains relevant data, the schedule and key dates for participating in the RFP process, frequently asked questions, and other information.

Unless noted otherwise, each RFP will procure one product (for “PIPP Load”), and there will be at most one winning bidder in each RFP (the winning bidder wins the right to serve the entire PIPP Load).

Unless noted otherwise, all capitalized terms in this document are defined in the Glossary or Master PIPP Supply Agreement available on the Information Website.

If there are any inconsistencies between this document and the prevailing Master PIPP Supply Agreement, the prevailing Master PIPP Supply Agreement governs.

Unless noted otherwise, “days” in this document refer to business days and times refer to prevailing Eastern Time.

Any examples in this document are illustrative only.

These Bidding Rules may be modified from time to time by the PIPP RFP Manager in order to:

- (1) facilitate a more competitive process,
- (2) make any necessary corrections and/or clarifications,
- (3) account for any change in the products to be procured,
- (4) conform to any change in state or federal law or rule, and
- (5) apply any change deemed necessary at the discretion of the RFP Manager.

Such modifications will be carried out in consultation with the FirstEnergy Ohio Utilities and will be posted to the Information Website without prior consent from the Public Utilities Commission of Ohio (“PUCO” or “Commission”) or any past, current, or prospective bidder.

## **1.1 PIPP RFP Manager**

The PIPP RFP Manager is CRA International, Inc. d/b/a Charles River Associates, Inc. The RFP Manager can be contacted by sending an email to [FEOUPIPPRFPManager@crai.com](mailto:FEOUPIPPRFPManager@crai.com) (not case-sensitive). The full contact information for the RFP Manager is as follows:

Attn: Brad Miller, Vice President / FEOU PIPP RFP Manager  
CRA International, Inc.  
200 Clarendon Street, T-9  
Boston, MA 02116-5092  
Phone: 617.425.3384  
[FEOUPIPPRFPManager@crai.com](mailto:FEOUPIPPRFPManager@crai.com)

## **2. PRODUCT BEING PROCURED AND OBLIGATIONS OF A WINNING BIDDER**

This section summarizes the common elements of the products to be procured in the RFPs as well as the related obligations of a winning bidder. The Information Website provides details about the product to be procured in a specific RFP including the delivery period and the nominal MW size. The Master PIPP Supply Agreement (or Glossary) defines terms and provides details of the obligations of a winning bidder.

The product to be procured is Full Requirements Service to serve the PIPP Load of the FirstEnergy Ohio Utilities.

A winning bidder will assume all responsibilities of a PJM Load Serving Entity ("LSE") and will be responsible for supplying all obligations associated with Full Requirements Service. Full Requirements Service includes unbundled Energy, Capacity, Ancillary Services, and Firm Transmission Service, including all transmission and distribution losses, congestion and imbalance costs associated with the provision of the foregoing services, and any other LSE service or other service as may be required by PJM and Section 4928.141 of the Ohio Revised Code to serve the PIPP Load of the FirstEnergy Ohio Utilities.

Winning bidders will not be responsible for meeting Ohio's Alternative Energy Portfolio Standard.

The FirstEnergy Ohio Utilities will provide distribution services and will be responsible for Network Integrated Transmission Service ("NITS") charges and for other non-market-based FERC approved transmission charges for shopping and non-shopping load.

## **3. SINGLE WINNING BIDDER**

The intent of the PIPP RFP is to select a single winning bidder — the PIPP Supplier — for 100 percent of the PIPP Load in the RFP.

## **4. PRIOR TO THE BID WINDOW**

### **4.1 Information Provided to Bidders**

The FirstEnergy Ohio Utilities will make available certain information to prospective bidders in advance of bidders need to qualify to participate in the process. This information will be posted on the Information Website.

#### **4.1.1 Data**

The FirstEnergy Ohio Utilities will provide:

- Historical hourly load data for total retail load and PIPP Load.
- Historical load data for the most recent three-year period available.
- Historical switching statistics and historical load profiles.

#### **4.1.2 Product Size**

No later than four (4) days prior to the PIPP Supplier Application deadline, the PIPP RFP Manager will announce the approximate, nominal MW-measure of the product in the PIPP RFP.

## 4.2 Qualification Process

During the qualification process, prospective bidders apply to become Registered Bidders in the PIPP RFP. During the qualification process the prospective bidders are required to provide financial information, make a number of certifications, and provide pre-bid security.

Among other requirements set forth in other PIPP RFP documents, prospective bidders will be required to:

- By the PIPP Supplier Application deadline, submit a completed PIPP Supplier Application from a person with the power to bind the bidder.
- Agree to comply with all rules of the RFP.
- Agree that if they become winning bidders, they will execute the Master PIPP Supply Agreement with the FirstEnergy Ohio Utilities within three (3) days following the close of the RFP.
- Confirm that they are a Competitive Retail Electric Service (“CRES”) provider and that they are registered with the FirstEnergy Ohio Utilities to provide competitive retail electric service in their service territories.
- Agree that if they become the winning bidder, they will comply with the creditworthiness requirements set forth in the Master PIPP Supply Agreement.
- Certify that if they qualify to participate, they will not disclose confidential information that may be obtained during the RFP.
- Certify that if they qualify to participate, they will not substitute another entity in their place, transfer their rights to another entity, or otherwise assign their status as Registered Bidders to another entity.
- Make a number of certifications to ensure the confidentiality of information regarding the RFP and — in regards to associations with other CRES providers in the FirstEnergy Ohio territory — to ensure that they are participating independently of other CRES providers in the PIPP RFP. More details on the certifications can be found in the section, “Confidential Information, Certifications, and Sanctions,” later in this document.
- Submit pre-bid security in the amount specified in the PIPP Supplier Application. Either cash (electronic wire transfer) or a Pre-Bid Security Letter of Credit will be accepted as pre-bid security. The standard form of the Pre-Bid Security Letter of Credit will be posted to the Information Website. If a draft Pre-Bid Security Letter of Credit submitted by the prospective bidder with the PIPP Supplier Application does not conform to the standard form, the prospective bidder shall indicate clearly any and all modifications in electronic, red-lined format from the standard form. Proposed modifications must be received by the RFP Manager no later than the PIPP Supplier Application deadline and approved by the FirstEnergy Ohio Utilities. The FirstEnergy Ohio Utilities will assess, in their sole and exclusive discretion, whether such modifications are acceptable.

Pre-bid security will remain in full force, at a minimum, until five (5) days after the conclusion of the RFP. Subsequently, a bidder's pre-bid security will be cancelled and returned as follows:

- As soon as practicable once it has been determined that the bidder will not be declared the RFP winner.
- After the bidder has signed the Master PIPP Supply Agreement and has complied with all creditworthiness requirements of the Master PIPP Supply Agreement.

The FirstEnergy Ohio Utilities can collect on the financial guarantees of a winning bidder that fails to sign the Master PIPP Supply Agreement or fails to comply with the creditworthiness requirements immediately following the close of the RFP.

If the applicant would like to propose changes to the Form of PIPP Supplier Letter of Credit to be used post-RFP by a winning bidder, those changes must be submitted in an electronic, red-lined version by the PIPP Supplier Application deadline. Likewise, if the applicant would like to propose an alternate form of guaranty, submit that in electronic form.

The PIPP Supplier Application must be submitted to the RFP Manager no later than PIPP Supplier Application deadline. Prospective bidders will be notified by the RFP Manager no later than five (5) days after the PIPP Supplier Application deadline whether they succeeded in becoming a Registered Bidder.

A prospective bidder that has qualified during the qualification process becomes a Registered Bidder.

### **4.3 Benchmark Price**

The Benchmark Price for the PIPP RFP will be set pursuant to the PUCO order following the last Standard Service Offer ("SSO") competitive bidding process ("CBP") that will be used to establish the Benchmark Price.

The Benchmark Price will be computed as the tranche-weighted average price using the number of tranches procured and the winning prices from the SSO CBPs covering the same delivery period as the Master PIPP Supply Agreement in the PIPP RFP.

The RFP Manager will inform all Registered Bidders of the Benchmark Price for the PIPP RFP product no later than the latest of: (a) three (3) days before the Bid Window opens and (b) the publication of the PUCO order following the last SSO that will be used to establish the Benchmark Price.

### **4.4 Extraordinary Events**

The RFP Manager, in consultation with the FirstEnergy Ohio Utilities, may determine that, due to extraordinary events, the schedule for the RFP process may need to be revised.

## **5. BIDDING FORMAT FOR PIPP RFPS**

In order to participate in the RFP, bidders must have been successful in the qualification process and become Registered Bidders. Only Registered Bidders are permitted to participate in the PIPP RFP. Registered Bidders will submit their bid in the RFP by accessing the RFP Manager's secure PIPP RFP portal.

### **5.1 Bid Submission**

The bids can be submitted during the Bid Window as specified for each PIPP RFP. A bidder submits a bid by completing the PIPP RFP Bid Submission Form on the PIPP RFP portal, including entering the bidder's bid price. The bid price is the price at which the Bidder agrees to serve the PIPP Load offered at the PIPP RFP. Once the bid is received electronically, a unique Confirmation Number is assigned to the bid, and a unique random number is assigned to the bidder the first time the bidder submits a bid during the Bid Window.

A submitted bid is a binding offer to serve the PIPP Load at the bid price. All bids will be considered binding offers to supply PIPP Load until bidders have been notified that they will not be declared the winning bidder in the PIPP RFP. Such notification will be made once the winning bidder has executed the Master PIPP Supply Agreement or five (5) days following the close of the bid window, whichever occurs first.

If the Bid Submission Form is incomplete, illegible, contains inconsistencies or errors, or otherwise is not considered conforming by the RFP Manager, the RFP Manager will attempt to notify the bidder that the bid is non-conforming. The bidder solely is responsible for ensuring they submit a conforming bid during the Bid Window. The RFP Manager and the FirstEnergy Ohio Utilities assume no responsibility if the bidder does not submit a conforming bid during the Bid Window. If a bidder submits more than one bid:

- The random number included in the Confirmation Number assigned to the first bid received from the bidder also will be the random number included in the Confirmation Number assigned to any subsequent bids received from the bidder. Each subsequent bid submission by a bidder does not generate a new random number for the bidder. But each bid is assigned a unique Confirmation Number.
- The last conforming bid received from the bidder during the Bid Window will supersede all prior bids submitted by the bidder.

If a bidder submits a bid during the Bid Window but later decides they do not want to submit a bid at all, there is an option on the PIPP RFP Bid Submission Form to cancel any prior bids submitted. However, a bidder must cancel its bid only during the Bid Window. If a bidder is experiencing technical difficulties during the Bid Window they can contact the RFP Manager. In any case, bids cannot be canceled after the Bid Window closes. Also, entering a bid price of zero is not a cancellation of a bid — instead, it is a binding commitment to be paid a price of zero for serving PIPP Load. A bidder must use the bid cancellation option during the Bid Window to cancel any prior bids submitted.

## **5.2 Bid Evaluation, Bid Selection, and Tie-Breaker**

Once the Bid Window is closed, all conforming bids will be sorted in ascending order by the prices in the bids, and then in ascending order by the random number in the Confirmation Number assigned to each bid. The lowest-priced bid that is below the Benchmark Price will be deemed the tentative winning bid.

If there is more than one bidder that submitted the lowest priced bid below the Benchmark Price, then there is a tie and the bidder with the lower random number in their Confirmation Number is deemed the tentative winning bidder.

If there are no conforming bids priced below the Benchmark Price, then there is no tentative winning bid and no tentative winning bidder.

## **6. AFTER THE RFP CLOSURES**

### **6.1 Notification of Results**

At the close of the PIPP RFP, the RFP Manager will notify the FirstEnergy Ohio Utilities, the PUCO, and the PUCO consultant (if one has been retained) as follows:

- Whether any of the PIPP RFP rules were violated in such a manner as to invalidate the RFP.
- Whether there is a tentative winning bidder, and if so, the identity of the tentative winning bidder and the tentative winning bid price.
- The identities of all the bidders, whether or not their bid was conforming, the price they bid, the time the bid was received, and the Confirmation Number they were assigned.

Bidders will be notified of their status (i.e., if they are the tentative winning bidder or not) as soon as practicable after the Bid Window closes.

The PUCO will confirm or reject the tentative winning bid and the winning bidder (if any) based on the information submitted by the RFP Manager. The PUCO may confirm or reject the results of the PIPP RFP and select the winning bidder and the winning bid (if any) through an order filed within forty-eight (48) hours of the conclusion of the PIPP RFP.

If a winning bidder is selected, it will be paid the winning price which is the price in the winning bidder's bid.

Once the PUCO issues an order, the RFP Manager will notify the winning bidder (if any) that they are the winning bidder. Once the winning bidder has executed the Master PIPP Supply Agreement, or five (5) days following the close of the Bid Window, whichever occurs first, the RFP Manager will notify the non-winning bidders that they have not won and bidders will be released from their potential obligation to supply PIPP Load.

## **6.2 Execution of Master PIPP Supply Agreement**

After confirmation of the RFP results by the PUCO, the winning bidder and the FirstEnergy Ohio Utilities will execute the Master PIPP Supply Agreement no later than three (3) days following the close of the PIPP RFP once the specific pricing and other information has been inserted in the Master PIPP Supply Agreement. The winning bidder must demonstrate compliance with the creditworthiness requirements set forth in the Master PIPP Supply Agreement.

## **6.3 Sanctions for Failure to Execute the Master PIPP Supply Agreement**

A winning bidder's financial guaranty posted with its PIPP Supplier Application may be forfeited if the winning bidder does not execute the Master PIPP Supply Agreement within three (3) days following the close of the PIPP RFP Bid Window, if it fails to demonstrate compliance with the creditworthiness requirements set forth in the Master PIPP Supply Agreement, or if it fails to agree to any of the terms of the Master PIPP Supply Agreement. If the FirstEnergy Ohio Utilities exercise their right to collect on the financial guarantees, then any contractual rights or other entitlements of the winning bidder will terminate immediately without further notice by the FirstEnergy Ohio Utilities.

In addition, the winning bidder will be liable for damages incurred by the FirstEnergy Ohio Utilities, which will be determined in accordance with the terms of the Master PIPP Supply Agreement as though the winning bidder were a Defaulting Party to the Master PIPP Supply Agreement.

## **6.4 Disclosure of the RFP Results**

The name of the winning bidder and the winning price will remain confidential unless and until released publicly by the PUCO or as required by law. The PUCO may choose to release additional information.

The winning bidder itself may release information regarding the fact that it has won, and a non-winning bidder itself may release information regarding the fact that it participated in the RFP, but not before the earliest of:

- (1) A PUCO order confirming the results of the PIPP RFP.
- (2) Forty-eight (48) hours after the Bid Window closes.

The winning bidder and the non-winning bidders otherwise continue to be bound by their certifications as described elsewhere. In particular, the winning bidder and the non-winning bidders are not allowed to reveal bid prices or the winning price in the RFP unless and until those prices are released publicly by the PUCO.

## **7. USE OF THE BIDDING WEBSITE**

Bidders will submit bids in the RFP by accessing the RFP Manager's secure PIPP RFP portal. An Authorized Representative of a bidder will access the PIPP RFP portal using their own Web browser. The URL address for the PIPP RFP portal, as well as user names and passwords, will be provided to Registered Bidders prior to the start of the RFP process.

The PIPP RFP portal allows a Registered Bidder to submit and confirm bids, to receive the Confirmation Number, and the time-stamp of the bid submission.

## **7.1 Requirements for Using the Bidding Website**

Access to the Bidding Website requires all of the following:

- User name and password provided by the RFP Manager.
- Access to the Internet.
- Compatible Web browser.
- Status as a Registered Bidder.

## **8. BACKUP BIDDING PROCEDURE**

In case a bidder has technical difficulties, and as a result is not able to submit a bid via the PIPP RFP portal, the Bid Submission Form should be e-mailed to the RFP Manager at [FEOUPIPRFPManager@crai.com](mailto:FEOUPIPRFPManager@crai.com).

## **9. WHO TO CONTACT IN CASE OF PROBLEMS DURING THE RFP**

A bidder should contact the RFP Manager if it has questions or problems at [FEOUPIPRFPManager@crai.com](mailto:FEOUPIPRFPManager@crai.com). The RFP Manager also will provide a phone number for bidders experiencing connectivity issues during the Bid Window.

## **10. CONTINGENCY PLAN TO PROCURE PIPP RFP LOAD**

### **10.1 Supplemental PIPP RFP**

In the event that the PIPP Load is not procured in the PIPP RFP (“first PIPP RFP”), a supplemental PIPP RFP will be conducted. All the Registered Bidders for the first PIPP RFP automatically will be Registered Bidders for the supplemental PIPP RFP — unless the Registered Bidder violated the rules or incurs a material change so that the Registered Bidder no longer meets the qualification criteria to be a Registered Bidder.

The bidding rules for the supplemental PIPP RFP will be the same rules as laid out in this Bidding Rules document for the first PIPP RFP, with one exception: there will be no Benchmark Price for the supplemental PIPP RFP. In the Supplemental PIPP RFP, the winning bidder will be the bidder that offers the lowest price in a conforming bid, even if this price is higher than the Benchmark Price of the first PIPP RFP.

As with the first PIPP RFP, the results of the supplemental PIPP RFP are subject to confirmation or rejection by the PUCO.

## **10.2 PIPP Supply Requirements to be Met through PJM-Administered Markets**

If, after the attempts above to procure PIPP Load, the PIPP Load remains unfilled, the necessary PIPP Load requirements will be met by the FirstEnergy Ohio Utilities through PJM-administered markets.

## **10.3 If the Selected PIPP Supplier Defaults Prior to or During the PIPP Delivery Period**

In the event the PIPP supplier selected from the RFP defaults prior to or during the delivery of PIPP Load requirements, the FirstEnergy Ohio Utilities will implement a contingency plan for PIPP Load. This contingency plan will follow the same steps as the contingency plan above. That is, a contingency PIPP RFP will be conducted if feasible. If a contingency PIPP RFP is not feasible or otherwise is not successful, then PIPP Load supply requirements will be met through PJM-administered markets as described above.

Additional costs incurred by the FirstEnergy Ohio Utilities in implementing the contingency plan will be assessed first against the defaulting supplier's credit security, to the extent available.

## **11. CONFIDENTIAL INFORMATION, CERTIFICATIONS, AND SANCTIONS**

### **11.1 Confidential Information**

Confidential Information relative to bidding strategy means information relating to a bidder's bid in the PIPP RFP process, whether in writing or verbally, which if it were to be made public likely would have an effect on any of the bid that another bidder would be willing to submit. Confidential Information relative to bidding strategy includes (but is not limited to): a bidder's strategy; a bidder's bid; the bidder's estimation of the value of serving PIPP Load; the bidder's estimation of the risks associated with serving PIPP Load; and a bidder's contractual arrangements for purchasing power to serve such load were the bidder to win the PIPP Load.

Confidential Information regarding the RFP means information that is not released publicly by the PUCO, the FirstEnergy Ohio Utilities or the RFP Manager and that a bidder acquires as a result of participating in the PIPP RFP process, whether in writing or verbally, which if it were to be made public could impair the integrity of current or future solicitations, impair the ability of the FirstEnergy Ohio Utilities to hold future solicitations, or harm consumers, bidders, or applicants. Confidential Information regarding the RFP includes (but is not limited to) all non-public reports of results and announcements made by the RFP Manager to any or all bidders in the PIPP RFP process.

Confidential Information may not receive continued confidential or protected treatment should:

- (a) a bidder publicly disclose Confidential Information relating solely to that bidder; or
- (b) public disclosure is required or compelled by the PUCO, a court or otherwise by law.

The RFP Manager, the PUCO, and the FirstEnergy Ohio Utilities shall not be liable for such public disclosures or, so long as reasonable measures have been taken to keep such information confidential, any other public disclosure of Confidential Information. By participating in this PIPP RFP process, each bidder acknowledges and agrees to the confidentiality provisions set forth herein, as well as any limitations thereto.

In addition, the bidder agrees the bidder's data and information submitted in this PIPP RFP process will be disclosed if required by any federal, state, or local agency (including, without limitation, the PUCO) or by a court of competent jurisdiction. However, the FirstEnergy Ohio Utilities will endeavor to notify the bidder in advance of such disclosure. In any event, neither the FirstEnergy Ohio Utilities nor the RFP Manager, nor any of their employees or agents, will be responsible to the bidders or any other party, or liable for any disclosure of such designated materials before, during or subsequent to this PIPP RFP process. Notwithstanding the above, the FirstEnergy Ohio Utilities and the RFP Manager reserve the right to use and communicate publicly and/or to third parties any and all information/data submitted as part of this PIPP RFP process in any proceedings before FERC, the PUCO, and any other regulatory body and the courts, if necessary, without the prior consent/approval of, or notice to, any such bidder.

## **11.2 Certifications and Disclosures to Be Made**

A prospective bidder will be required to make the certifications listed in the PIPP Supplier Application and to disclose certain information. For example:

- A prospective bidder will be required to certify that it accepts the terms of the Master PIPP Supply Agreement and, should it win the PIPP RFP, it will sign the applicable Master PIPP Supply Agreement and comply with all creditworthiness requirements by the stated deadline.
- A prospective bidder will be required in its PIPP Supplier Application to disclose any bidding agreement or any other arrangement in which the prospective bidder may have entered and that is related to its participation in the PIPP RFP process. A prospective bidder that has entered into such an agreement or arrangement must name the entities with which the prospective bidder has entered into a bidding agreement, a joint venture for the purpose of participating in the PIPP RFP process, a bidding consortium, or any other arrangement pertaining to participating in the PIPP RFP process. A bidding consortium is a group of separate businesses or business people joining together to submit joint bid in the RFP.
- Each prospective bidder will be asked to certify in its PIPP Supplier Application that it will undertake steps to appropriately restrict its disclosure of Confidential Information relative to its bidding strategy and Confidential Information regarding the PIPP RFP process.
- A prospective bidder will be asked to certify in its PIPP Supplier Application that it has not and will not come to any agreement with another CRES provider in the FirstEnergy Ohio Utilities' service territories with respect to bidding in the PIPP RFP, except as disclosed and approved by the RFP Manager in its PIPP Supplier Application.
- Before obtaining documentation necessary to participate in the RFP, Registered Bidders will be required to certify that they will continue to maintain the confidentiality of any information that they will have acquired through their participation in the RFP process.

## **11.3 Actions to be Taken if Certifications Cannot Be Made**

If a bidder cannot make all the certifications, the RFP Manager will decide within five (5) days following the deadline to submit the PIPP Supplier Application on a course of action on a case-by-case basis. To decide on this course of action, the RFP Manager may make additional inquiries and information requests to understand the reason for the inability of the bidder to make the certification.

If prospective bidders do not comply with additional information requests by the RFP Manager regarding certifications required in the PIPP Supplier Application, the RFP Manager may reject the application.

## **11.4 Sanctions for Failure to Comply**

Sanctions may be imposed on a bidder for failing to properly disclose information relevant to determining associations, for coordinating with another bidder, for failure to abide by any of the certifications made in its PIPP Supplier Application, for releasing Confidential Information or disclosing information during the PIPP RFP process (aside from only specific exceptions provided with respect to entities explicitly named in the PIPP Supplier Application as entities that are part of a bidding agreement or other arrangement), and in general for failing to abide by any of the Communications Protocols.

Such sanctions can include, but are not limited to, any one or more of the following:

- Termination of the Master PIPP Supply Agreement.
- The loss of all rights to provide supply for the FirstEnergy Ohio Utilities to serve any load won by such bidder.
- The forfeiture of letters of credit, financial guarantees, and other fees posted or paid.
- Action (including prosecution) under applicable state and/or federal laws.
- Attorneys' fees and court costs incurred in any litigation that arises out of the bidder's improper disclosure.
- Debarment from participation in future competitive bidding processes.
- Other sanctions that may be appropriate.

Should such an event occur, the RFP Manager will make a recommendation to the FirstEnergy Ohio Utilities regarding sanctions. The imposition of such sanctions will be at the discretion of the FirstEnergy Ohio Utilities.

## **12. MISCELLANEOUS**

### **12.1 Warranty on Information**

The information provided for the RFP, including but not limited to information provided on the Information Website, has been prepared to assist bidders in evaluating the PIPP RFP process. It does not purport to contain all the information that may be relevant to a bidder in satisfying its due diligence efforts. Neither the FirstEnergy Ohio Utilities nor the RFP Manager make any representation or warranty, expressed or implied, as to the accuracy or completeness of the information, and shall not, either individually or as a corporation, be liable for any representation expressed or implied in the PIPP RFP process or any omissions from the PIPP RFP process, or any information provided to a bidder by any other source. A bidder should check the Information Website frequently to ensure it has the latest documentation and information. Neither the FirstEnergy Ohio Utilities, nor the RFP Manager, nor any of their representatives, shall be liable to a bidder or any of its representatives for any consequences relating to or arising from the bidder's use of information.

## **12.2 Hold Harmless**

Bidder shall hold the FirstEnergy Ohio Utilities and the RFP Manager harmless of and from all damages and costs, including but not limited to legal costs in connection with all claims, expenses, losses, proceedings or investigations that arise in connection with the RFP process or the award of a bid pursuant to the RFP process.

## **12.3 Bid Submissions Become the FirstEnergy Ohio Utilities' Property**

All bids submitted by bidders participating in the PIPP RFP process will become the exclusive property of the FirstEnergy Ohio Utilities upon conclusion of the PIPP RFP process.

## **12.4 Bidder's Acceptance**

Through its participation in the PIPP RFP process, a bidder acknowledges and accepts all the terms, conditions and requirements of the RFP process and the Master PIPP Supply Agreement.

## **12.5 Permits, Licenses, Compliance with the Law and Regulatory Approvals**

Bidders shall obtain all licenses and permits and status that may be required by any governmental body, agency or organization necessary to conduct business or to perform hereunder. Bidders' subcontractors, employees, agents and representatives of each in performance hereunder shall comply with all applicable governmental laws, ordinances, rules, regulations, orders and all other governmental requirements.

## **12.6 Intellectual Property**

All title, interests and other intellectual property rights in and to the RFP design, the RFP format and methodology, the RFP software, the source code (including all modifications, enhancements, customization, adaptations and derivative works made by the RFP Manager) and associated documentation, including but not limited to these Bidding Rules, and the screen formats and forms designed by the RFP Manager (the "RFP Software"), are proprietary to the RFP Manager and all rights, title, and interest to the RFP Software remain with the RFP Manager. The RFP Manager grants Registered Bidders a non-exclusive, non-transferable, limited license to use the RFP Software, solely for use in connection with the RFP, subject to the terms and conditions set forth herein, and not for copying, relicensing, sublicensing, distribution or marketing by the Registered Bidder. No other interest is conveyed to the Registered Bidder other than the license expressly granted herein. The foregoing use license shall immediately terminate upon disqualification of the Qualified Bidder or upon termination or completion of the RFP process. If at any time it is determined in the RFP Manager's sole discretion that the Registered Bidder is in breach of this section 12.6, the RFP Manager shall be entitled to terminate the Registered Bidder's access rights to the RFP Software.

Notwithstanding anything herein to the contrary, and without limiting the Registered Bidder's other obligations herein, the Registered Bidder shall not, nor shall it permit any third party to: (i) modify, translate or otherwise create derivative works of the RFP Software; (ii) reverse engineer, decompile, decode, disassemble or translate any RFP Software, or output thereof, or otherwise attempt to reduce to human readable form or derive the source code, protocols or architecture of any RFP Software; (iii) use or study any RFP Software, or output thereof, for the purpose of developing any software that is intended to replace, or that has functions, structure or architecture similar to, such RFP Software, or any part thereof; (iv) publish, or otherwise make available to any third party, any benchmark or other testing information or results concerning the RFP Software; (v) permit any other person who is not authorized to access or use all or any part of the RFP Software or (vi) copy the RFP Software, distribute the RFP Software, remove or obscure any proprietary labeling on or in the RFP Software, create any derivative works based on the RFP Software, or modify the RFP Software, in each case, except to the extent expressly permitted by the RFP Manager in writing.

In using the RFP Software, a Registered Bidder shall take steps to prevent any virus, worm, built-in or use-driven destruction mechanism, algorithm, or any other similar disabling code, mechanism, software, equipment, or component designated to disable, destroy or adversely affect the RFP Software from being introduced into the systems.