



Florida Municipal Power Agency

**REQUEST FOR PROPOSALS
FOR
UTILITY RATE SERVICES**

Florida Municipal Power Agency
8553 Commodity Circle
Orlando, Florida 32819-9002
(407) 355-7767
www.fmpa.com

REQUEST FOR PROPOSALS

(This is not an order)

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Florida Municipal Power Agency
TO: 8553 Commodity Circle
Orlando, Florida 32819
Attn: Sharon Smeenk

RFP FMPA 2017-212

Date Issued: November 17, 2017

Telephone: (407) 355-7767

SEALED PROPOSALS MUST PHYSICALLY BE IN THE FLORIDA MUNICIPAL POWER AGENCY OFFICE PRIOR TO PROPOSAL OPENING AT 10:30 A.M. ON **WEDNESDAY, JANUARY 10, 2018** WHICH WILL BE IN THE FMPA 1ST FLOOR CONFERENCE ROOM LOCATED IN THE FMPA BUILDING AT 8553 COMMODITY CIRCLE, ORLANDO, FLORIDA 32819.

- Proposals shall include the forms provided and must be manually signed.
- Proposals shall be sealed in an envelope with the proposal number, opening date, and time clearly indicated on the outside of the envelope.
- Proposals received after the opening date and time may be rejected.
- The attached Request for Proposals shall become part of any purchase order resulting from this Request for Proposal.

DESCRIPTION

November 2017

**FLORIDA MUNICIPAL POWER AGENCY
REQUEST FOR PROPOSALS
FOR
UTILITY RATE SERVICES**

See attached Request for Proposal, General Conditions, Specifications, and Proposal Forms for detailed description.

It is the intent and purpose of the Florida Municipal Power Agency that this Request for Proposal promotes competitive bidding. It shall be the proposer's responsibility to advise if any language, requirements, etc. or any combination thereof, inadvertently restricts or limits the requirements stated in this Request for Proposal to a single source. Such notification must be submitted in writing and must be received by not later than ten (10) days prior to the proposal opening date.

ADVERTISEMENT

Proposals for Utility Rate Services

November 2017

**FLORIDA MUNICIPAL POWER AGENCY
PROPOSALS FOR UTILITY RATE SERVICES**

**REQUEST FOR PROPOSALS
RFP# 2017-212**

Sealed proposals will be received by the Florida Municipal Power Agency (FMPA), 8553 Commodity Circle, Orlando, Florida 32819 until 10:30 a.m., January 10, 2018, when at that time Proposals will be opened publicly by an FMPA representative.

The proposal is for Utility Rate Services as more fully described in the RFP package.

RFP packages for this project may be obtained from FMPA at the above address, by telephone (407) 355-7767, via email request to bidinfo@fmpa.com, or via Internet download at www.fmpa.com.

No proposal may be altered, withdrawn, or resubmitted after the scheduled closing time for receipt of proposals. Proposals received after the day and time stated above will not be considered and may be returned to the proposer unopened.

Proposals will be accepted for Utility Rate Services from companies that have established, through demonstrated expertise and experience, that they are qualified to provide the services as specified.

The Florida Municipal Power Agency reserves the right to reject any and all proposals in total or in part and/or to waive defects in proposals.

Jacob Williams
General Manager and CEO
Florida Municipal Power Agency

FLORIDA MUNICIPAL POWER AGENCY

Request for Proposals for Utility Rate Services

1. FMPA Description

Formed by the Florida Legislature in February 1978, the Florida Municipal Power Agency (FMPA) is a non-profit, joint action agency created to serve the needs of municipal electric utilities in Florida. Of the 34 municipal systems in the State, 31 are FMPA Members who participate at varying levels in Agency activities.

Member utilities of the Agency serve approximately 2 million Floridians. Each Member appoints one representative to the Board of Directors which governs the Agency's activities. Thirteen Members currently purchase power from the Agency through the All-Requirements Project (ARP). The ARP serves approximately 250,000 electric customers. For more information on FMPA, please visit our website at www.fmpa.com.

2. General Description of Services Sought

With this RFP, FMPA is seeking one or more firms to provide rate related services, as defined below, for FMPA and its Members. FMPA will enter into a blanket Services Agreement with selected firm(s) which terms will govern for any future work assignments requested of the selected firm(s) either by Members or FMPA.

MEMBER RATE REVIEWS

Generally, a rate review for a member utility will consist of calculating the test year revenue requirements, estimating the test year revenues under existing rates, determining the sufficiency of existing rates, and preparing a summary letter report. Other analyses that may be requested by a member utility include:

- A review of funding to (from) City utilities (electric, water, sewer, gas) to identify possible cross-subsidies between departments
- A review of allocation of common administrative costs to determine if there are any cross-subsidies between other city funds
- A review of rates and cost forecasts to recommend an appropriate amount to maintain in a utility's Rate Stabilization fund.
- A financial review of electric system losses to determine possible sources and to test for reasonableness
- A review of transfers to the general fund from all utilities, i.e. electric, gas, water and sewer to assure appropriateness of transfers
- A review of electric customer mix, i.e. residential, commercial, industrial, to determine proper classification of customers
- A review of streetlight and traffic signal charges
- A comparison of the Member's rate structure to two or three other electric utilities, with suggestions as to potential structure changes
- A comparison of the City's commercial rates to other electric utilities to identify competitiveness

MEMBER COST-OF-SERVICE RATE STUDIES

A cost-of-service rate study (rate study) will be a rate review taken to a greater level of detail and depth. The rate study will involve identifying the cost of serving each customer rate class. Costs will be functionalized and classified and then allocated to the rate class. Load research data will need to be developed and used to allocate cost to each customer class.

This allocated cost of service study will be used to attribute the member utility's total cost of serving each customer class and identify any possible cross-subsidies between rate classes. A rate study may also include, at the request of the member utility, any or all of the additional analyses outlined under "Rate Review" above.

MEMBER RATE DESIGN SERVICES

For the purpose of this RFP, rate design services will include all consulting services necessary to develop new rate(s), rate class(es), or rate structure(s) for a member utility. Examples of rate design services include, but are not limited to:

- Development of appropriate energy and demand charges, terms and conditions, and other requirements for a commercial demand rate schedule
- Development of a time-of-use rate with appropriate on-peak and off-peak charges, terms and conditions, and other requirements
- Development of interruptible rates with appropriate incentives, charges, terms and conditions, and other requirements
- Assistance with identifying cost components to facilitate unbundling of rates and developing the unbundled rates, as appropriate
- Conduct studies to determine the cost impact of retail customers' solar installations on the utility system and recommend possible changes to the utility rate structure, including new demand charges
- Development of miscellaneous customer service charges
- Development of streetlight and traffic signal charges
- Preparation of filings for the Florida Public Service Commission and any other governmental or regulatory body, as appropriate

FMPA WHOLESALE RATE SERVICES

Wholesale rate services include reviewing and analyzing wholesale rates that FMPA pays to third-party service providers, as well as FMPA's wholesale rates charged to FMPA Project Participants including the All Requirements Project Participants. Services may include:

- Reviewing and analyzing wholesale power and transmission service rate information filed by Florida (and other) jurisdictional utilities with the Federal Energy Regulatory Commission (FERC), and assisting in the due diligence review of Open Access Transmission Tariff (OATT) formula rate filings, including:

- Identifying issues to formulate a position
- Assisting FMPA's legal counsel in preparing necessary pleadings and data requests
- Participating in discussions with service providers to reconcile issues or achieve a settlement
- Assisting with cost of service studies for FMPA transmission facilities and related transmission service rate design
- Development of comparisons of FMPA's wholesale rate structure for the All-Requirements Project (ARP) to other joint action agencies
- Evaluation of the appropriateness of costs included in each of the ARP's rate components
- Development of recommendations for restructuring rates and ensuring proper allocation of costs to ARP Participants as Project objectives change

To the extent that any of the services described under this Section 2 are performed for a member utility, the selected firm(s) will work under the direction of the member utility. The scope of services for any specific engagement will be developed to meet the specific rate-related needs of the member utility, which may include a combination of the tasks listed above. Member utilities will issue a Purchase Order directly to the selected firm(s). The terms of both the Services Agreement between FMPA and the selected firm(s) and the member Purchase Order shall apply.

To the extent that any of the services described under this Section 2 are performed for FMPA, the selected firm(s) will work under the direction of FMPA staff. FMPA will work with the selected firm(s) to develop a Scope of Work, and the terms of both the Services Agreement and the Scope of Work document will apply.

Ideally, FMPA and its Members desire to use experienced firms that have the expertise to provide the services desired and any additional, related services that can be offered to, for example, the water and sewer departments of FMPA's member utilities. FMPA intends to select one or more firms in each service area or for specific services in each service area. Firms familiar with ratemaking practices and regulations in Florida and with demonstrated experience working with utilities in Florida will be given greater consideration for services aimed at assisting FMPA's member utilities. Firms with experience in whole rates and rate cases at FERC will be given greater consideration for services aimed at assisting FMPA with wholesale rate review and ratemaking.

3. General Overview

Upon selection of the awarded firm (s), FMPA will enter into a Services Agreement specifying terms and conditions and base pricing. FMPA Member(s) who desire the services of the firm(s) will request a Scope of Work and associated cost estimate on a project-specific basis from the selected firm (s), and then, issue a Purchase Order with project-specific specifications. In addition, the Member Purchase Order may carry additional terms and conditions as required by the FMPA Member. Except for wholesale rate services, all project-specific direction, guidance and invoicing will be conducted between the FMPA Member and the selected firm (s).

4. Proposal Contents

- a. **Description of Services:** Proposers are to include with their proposal a complete description of their understanding of the services requested. This description should be as definitive as possible to allow reasonable understanding and evaluation of the proposal and demonstrate the proposer's understanding of the requested Scope of Services.
- b. **Project Details:** Proposers should identify the specific details of how they will provide the services outlined in Section 2, above. Proposals should include a detailed description of the services available to FMPA and FMPA Members.
- c. **Related Experience:** The proposer must demonstrate first-hand experience in providing similar services, including experience in working with utilities in the State of Florida. A list of references, preferably in the municipal electric utility industry, including contact information and a brief description of the project must be provided. Work samples from similar projects must be provided.
- d. **Qualifications of Staff:** The proposal should include a description of any special qualifications of the personnel who will be providing services that are indicative of working familiarity with electric utilities. The proposal must identify specific staff to be assigned to these projects, and include information demonstrating they have first-hand experience in providing rate services to one or more Florida utilities.
- e. **Availability of Resources:** The proposer must show that they have the resources necessary to provide the requested services and clearly define any limitations.
- f. **Location of Staff:** The proposal must include the location of offices and the number of staff located in each office, including key staff who may be assigned to projects associated with this RFP.
- g. **Use of Subcontractors:** The proposal must specifically identify if any aspects of the project may be completed by a subcontractor. Specific project tasks and the specific subcontractor to be used must be provided.
- h. **Ownership Structure:** The proposal must include a full description of the ownership structure of the firm, including all parents and affiliates.
- i. **Proposer Information Form:** A completed Proposer Information Form must be provided.

- j. Pricing:** It is understood that each project will be different and therefore total project costs will vary based on the project scope. As noted in Section 3, the entity requesting the services will request a Scope of Work and associated cost estimate for each individual project.

However, for evaluation and comparison purposes, proposers must provide a standard rate sheet for personnel that may be providing the services noted in Section 2. The pricing will remain firm for a period of one year after any agreements are executed, with opportunities for annual pricing updates each year. FMPA reserves the right to evaluate requested pricing increases each year to determine if they are appropriate and reasonable.

The proposal must clearly identify any exceptions or circumstances where the pricing would differ from the standard rate sheet provided.

In addition to the items noted above, proposers are asked to include any additional items that may be needed to complete the services requested that may not have been identified in this RFP. Also, where possible, proposers are encouraged to present alternative approaches to achieving the intended goals of the project. Proposals should also include a description of any value-added services that can be provided by the firm to FMPA or the individual member utilities.

4. RFP Schedule

FMPA's timetable for this Request for Proposal (RFP) process is shown below. Note that the dates shown are only estimates and may be modified at any time by FMPA.

Public Notice/Distribution of RFP	November 17, 2017
Deadline for questions concerning the RFP	December 8, 2017
Sealed Proposal(s) Due Date	January 10, 2018
Notification of Award	January 31, 2018

5. Notice to Proposers

Sealed proposal packages will be received until 10:30 a.m. EDT on January 10, 2018 ("Proposal Due Date") at the offices of the Florida Municipal Power Agency. Each proposer is required to submit a Proposer Information Form (included in this RFP package), other forms included in this package as appropriate, and any other information necessary to allow a complete evaluation of the proposal. Registered proposers will be notified through the issue of RFP addenda of any change in the Proposal Due Date or other necessary revision to information contained in this RFP. FMPA reserves the right to reject all proposals received after the Proposal Due Date.

One (1) original, one (1) electronic version, and four (4) copies of the proposal response package should be sealed and delivered to the following address:

Ms. Sharon Smeenk
Member Services Manager
Florida Municipal Power Agency
8553 Commodity Circle
Orlando, Florida 32819

Clearly legible on the outside of the sealed envelope shall be "Utility Rate Services, FMPA RFP# 2017-212".

6. Duration of Offer

Proposals submitted in response to this RFP are irrevocable for 180 days following the closing date. This period may be extended at FMPA's request only by written agreement of the proposer. The content of this RFP and the proposal of the successful proposer may be included by reference in any resulting contract.

A Services Agreement will be executed between FMPA and the successful proposer(s). A sample Services Agreement is included as Attachment A. Firms submitting proposals are asked to review the Agreement and specify on the Proposer Information Form if the firm takes any exceptions to the terms and conditions of the Agreement.

7. Term & Extension Option

This proposal may be extended by mutual agreement between FMPA and/or FMPA Members and the successful proposer(s).

8. Right of Rejection

This RFP is not an offer establishing any contractual rights. This solicitation is solely an invitation to submit proposals.

FMPA reserves the right to:

1. Reject any and all proposals received in response to this RFP.
2. Waive any requirement in this RFP.
3. Not disclose the reason for rejecting a proposal.
4. Not select the proposal with the lowest price.
5. Seek and reflect clarifications to proposals.

9. Interpretations and Addenda

All questions regarding interpretation of this RFP, technical or otherwise, must be submitted by December 8, 2017 in writing to the following:

By Mail or Courier: Sharon Smeenk
Florida Municipal Power Agency
8553 Commodity Circle
Orlando, Florida 32819

By Email: sharon.smeenk@fmpa.com

Only written responses provided by FMPA to proposers' questions will be considered official. A verbal response by FMPA will not be considered an official response. Written responses to questions and requests for interpretations will be provided to the proposer posing the question or making the request unless the question and answer are applicable to the RFP process in general, in which case, at FMPA's discretion, the question and answer may be provided to all interested parties.

10.Errors, Modifications or Withdrawal of Proposal

Each proposer should carefully review the information provided in the RFP prior to submitting a response. The RFP contains instructions which should be followed by all proposers. Modifications to proposals already received by FMPA will only be accepted prior to the Proposal Due Date. Proposals may be withdrawn by giving written notice to FMPA prior to the Proposal Due Date.

11.Proprietary Confidential Business Information

All proposals shall be the property of FMPA. Pursuant to Section 119.071(1) (b), Florida Statutes (2014), all sealed packages submitted to FMPA in response to this RFP are exempt from the public records disclosure requirements of Article 1, section 24(a) of the Florida Constitution and section 119.07(1), Florida Statutes, until such time as FMPA provides notice of a decision or 30 days after proposal opening, whichever is earlier. FMPA will not disclose to third parties any information labeled "Confidential" in a proposal, unless such disclosure is required by law or by order of any court or government agency having appropriate jurisdiction.

However, FMPA reserves the right to disclose any information contained in any proposal to third parties for the sole purpose of assisting in the proposal evaluation process.

12.Proposer Qualifications

FMPA will accept proposals from firms knowledgeable in providing the requested services. Proposers unfamiliar to FMPA may be required to provide proof of experience.

13.Evaluation Process

The proposals will be evaluated based on information provided by each proposer by the Proposal Due Date. No additional data will be considered after the Proposal Due Date, except for clarifications requested by FMPA. FMPA will evaluate the proposals in terms of cost and other quantitative and non-quantitative factors.

Selection and rejection of proposals and notification of proposers at all stages will remain entirely with FMPA's discretion. FMPA intends to notify proposers not selected under this solicitation within a reasonable amount of time.

14. Public Entity Crimes Statement

Pursuant to Section 287.133(2) (a), Florida Statutes (2014), all proposers should be aware of the following:

“A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor or consultant under a contract with a public entity; and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017 for CATEGORY TWO for a period of 36 months following the date of being placed on the convicted vendor list.”

15. Collusion

By offering a submission pursuant to this RFP, the respondent certifies that they have not divulged, discussed, or compared its proposal with other proposers and has not colluded with any other proposers or parties to this proposal package whatsoever.

16. Drug Free Workplace

Whenever two or more responses to this RFP are identical with respect to quality, delivery, and service are received, preference shall be given to a respondent that certifies that it has implemented a drug-free work-place program by completing and executing the attached Drug Free Workplace Statement.

17. Final Contract

Any final contract(s) that result from the proposal evaluation and negotiation process may need to be submitted to FMPA's Executive Committee and/or Board of Directors for approval.

18. Entire Contract

These General Terms and Conditions, the Services Agreement between FMPA and the selected firm (s), and the Participating Member Purchase Order (PO) for which they are being provided (including attachments thereto) constitute the entire agreement.

18. Other FMPA Members

It is anticipated and our intent that FMPA member municipal electrical utilities may wish to purchase the specified services. Therefore, the proposer (s) is requested to extend the quoted price to any municipal system. In that event, all of the applicable terms and conditions of this specification shall apply.

19. Use of Ideas

All materials submitted in response to the RFP become the property of FMPA and will be returned only at the option of FMPA. Except as otherwise prohibited by law, FMPA has the right to use any and all ideas presented in response to this RFP. Selection or rejection of a proposal does not affect this right.

RFP FORMS

DRUG-FREE WORKPLACE COMPLIANCE FORM

IDENTICAL TIE PROPOSALS

Preference shall be given to businesses with drug-free workplace programs. Whenever two or more proposals which are equal with respect to price, quality, and service are received by the State or by any political subdivision for the procurement of commodities or contractual services, a proposal received from a business that certifies that it has implemented a drug-free workplace program shall be given preference in the award process. Established procedures for processing the proposals will be followed if none of the ties vendors have a drug-free workplace program. In order to have a drug-free workplace program, a business shall:

The undersigned vendor in accordance with Florida Statute 287.087 hereby certifies that _____ does:

(Name of business)

1. Publish a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the workplace and specifying the actions that will be taken against employees for violations of such prohibition.
2. Inform employees about the dangers of drug abuse in the workplace, the business's policy of maintaining a drug-free workplace, any available drug counseling, rehabilitation, and employee assistance programs, and the penalties that may be imposed upon employees for drug abuse violations.
3. Give each employee engaged in providing the commodities or contractual services that are under proposal a copy of the statement specified in Subsection 1.
4. In the statement specified in Subsection 1, notify the employees that, as a condition of working on the commodities or contractual services that are under proposal, the employee will abide by the terms of the statement and will notify the employer of any conviction of, or plea of guilty or nolo contendere to, any violation of Chapter 1893 or of any controlled substance law of the United States or any state, for a violation occurring in the workplace no later than five (5) days after such conviction.
5. Impose a sanction on, or require the satisfactory participation in a drug abuse assistance or rehabilitation program if such is available in the employee's community, by any employee who is so convicted.
6. Make a good faith effort to continue to maintain a drug-free workplace through implementation of this section.

As the person authorized to sign the statement, I certify that this form complies fully with the above requirements.

Vendor's Signature

Date

FMPA RFP 2017-212
PROPOSER INFORMATION FORM

_____ We DO NOT take exception to the Proposal Specifications or Services Agreement.

_____ We TAKE exception to the Proposal Specifications and/or Services Agreement as follows:

Company Name:

By:

(Authorized Person's Signature)

(Print or type name and title of signer)

Company Address:

Contact Person Name:

Contact Email:

Telephone Number:

Date:

Check if applicable:

Our company is a ☐ Minority Owned Business ☐ Women Owned Business

STATEMENT OF NO PROPOSAL

Sharon Smeenk
Florida Municipal Power Agency
8553 Commodity Circle
Orlando, FL 32819

We, the undersigned, have declined to submit a proposal on your FMPA Request for Proposals 2017-212 for Utility Rate Services for the following reasons:

- ☐ We do not offer this service.
- ☐ Our schedule would not permit us to perform.
- ☐ Unable to meet specifications.
- ☐ Other

We understand that if the Statement of No Proposal letter is not executed and returned, our name may be deleted from the list of qualified proposers of the Florida Municipal Power Agency.

Company Name: _____

By: _____
Authorized Person's Signature)

(Print or type name and title of signer)

Company Address: _____

Email Address: _____

Telephone Number: _____

Date: _____

ATTACHMENT A
SERVICES AGREEMENT

Services Agreement

This Services Agreement is entered into on this ____ day of _____, 2017, and is by and between Florida Municipal Power Agency, a governmental joint action agency organized and existing pursuant to Florida law, with its office located at 8553 Commodity Circle, Orlando, Florida 32819, ("FMPA") and [____], with its principle place of business located at [ADDRESS], ("_____").

FMPA is a municipal electric joint action agency formed pursuant to section 163.01, Florida Statutes, and exercises powers pursuant to section 163.01 and chapter 361, part II, Florida Statutes.

Contractor is company offering utility rate services. The parties desire for Contractor to perform the services more fully described in this agreement and in Schedule A.

Now therefore, for and in consideration of the premises and mutual covenants made herein, the parties agree as follows:

Section 1. Scope of Services

Contractor shall provide its services (the "Services") to FMPA as described in Schedule A to this agreement, which is attached hereto and incorporated into this agreement by this reference and which may be amended at the sole discretion of FMPA. In the event that any terms or conditions provided in Schedule A conflict with any terms or conditions of this agreement, the terms of this agreement shall control.

Section 2. Term & Termination

This agreement shall commence upon the date stated in the introductory clause of this agreement, and, unless sooner terminated, shall continue in force for an initial period of five (5) years from its effective date. The initial term may be extended for five (5) additional one-year periods at the option of FMPA under the same terms and conditions as the original Agreement, including any Amendments thereto, unless otherwise modified by mutual agreement of FMPA and Contractor.

At any time, FMPA may terminate this contract, in whole or in part, for failure of Contractor to perform in accordance with the terms of this contract, or for any reason, at FMPA's sole discretion, upon 10 days prior written notice. Contractor may terminate this contract for cause upon 10 days prior written notice.

Upon Contractor's receipt of FMPA's notice of termination, Contractor shall cease all performance related to the Services, unless directed to do otherwise by FMPA in writing. FMPA shall pay Contractor for any Services that were completed by Contractor prior to the termination of this agreement. Upon such termination, Contractor shall submit to FMPA a final invoice in a manner that is sufficient for FMPA to verify the Services performed by Contractor prior to the date of termination. In no event shall the final reimbursement include any anticipated profits or revenue or other economic loss for unperformed services. No payment shall be made for any work

performed by Contractor after the termination date unless Contractor is expressly requested in writing to perform such work by FMPA.

Section 3. Compensation and Payment

FMPA shall pay Contractor for Services furnished under this agreement upon submission of invoice(s) as described in Schedule A. Contractor shall not furnish additional services or incur additional expenses without written authorization and additional funding from FMPA. FMPA shall make payment for completed Services within 30 days after receipt of an invoice.

Section 4. Independent Contractor Status

It is understood and agreed that Contractor is an independent contractor, is not an agent or employee of FMPA, and is not authorized to act on behalf of FMPA. Contractor agrees not to hold him or herself out as, or give any person any reason to believe that he or she is an employee, agent, or partner of FMPA. Contractor will not be eligible for any employee benefits, nor will FMPA make deductions from any amounts payable to Contractor for taxes or insurance. All payroll and employment taxes, insurance, and benefits shall be the sole responsibility of Contractor. Contractor retains the right to provide services for others during the term of this Agreement and is not required to devote his or her services exclusively for FMPA. Contractor agrees that it shall bear the responsibility for verifying the employment status, under all applicable immigration laws, of all persons it employs in the performance of this contract.

Section 5. Standard of Care

The Services and any deliverables provided pursuant to this agreement shall be free from material defect. Contractor represents that the Services shall be performed with reasonable care in a diligent and competent manner and in accordance with generally accepted professional practices.

Section 6. Confidentiality

(a) For purposes of this Section 6, "Confidential Information" means the confidential and proprietary information of a party (including, with respect only to FMPA, the confidential and proprietary information of any one or more of its member municipal electric utility systems, including the FMPA), and includes without limitation all data, specifications, calculations, estimates, plans, drawings, construction or technical documents, photographs, summaries, spreadsheets, reports, memoranda, letters, email, and any other documents, instruments, information and materials of any nature whatsoever, whether oral, written or recorded in another medium, relating to the business of a party (including, with respect only to FMPA, the business of one or more of its member electric utility systems, including the FMPA) which has been or may afterwards be provided or disclosed in relation to the Services. Each party may disclose its Confidential Information (including, with respect only to FMPA, the Confidential Information of any one or more of its member municipal electric utility systems, including the FMPA) (the "Disclosing Party") to the other Party (the "Receiving Party"). Tangible items of Confidential Information may be marked "CONFIDENTIAL" or

"PROPRIETARY" or "CONFIDENTIAL AND PROPRIETARY" by either party, except that no such mark is necessary to cause tangible items to be considered Confidential Information if such tangible items are otherwise included in the definition provided in this section.

(b) The Receiving Party agrees that Confidential Information received must be considered confidential and proprietary property of the Disclosing Party and the Receiving Party, unless prohibited by Florida law, shall hold the same in confidence, and shall not use Confidential Information for purposes other than the purposes contemplated by this agreement, which for Contractor is limited to its rendering of the Services to or for the FMPA. The Receiving Party, to the extent permitted by Florida law, shall not disclose, publish, or otherwise reveal any Confidential Information to any third party whatsoever except after receipt of the specific prior written authorization of the Disclosing Party. Contractor, as the Receiving Party, further agrees, without limiting the other provisions of this agreement, to not utilize the Confidential Information received in association with the agreement, in any way, for any client other than the FMPA and for any matter other than in performance of the Services contemplated hereunder.

(c) Notwithstanding any other provision of this contract, FMPA as the Receiving Party may disclose Confidential Information if necessary, in the opinion of legal counsel for FMPA, to comply with applicable law (including, without limitation, the Florida Public Records Law, Chapter 119, Florida Statutes), order, regulation, ruling, subpoena, or order of a governmental authority or tribunal with competent jurisdiction. In the event that FMPA as the Receiving Party is requested or required to disclose any Confidential Information, FMPA shall promptly notify Contractor of the request or requirement prior to disclosure, if reasonably possible, so that Contractor may, if it elects, seek an appropriate protective order or other designation of such Confidential Information as containing trade secrets or other commercially sensitive information or otherwise seek to contest, limit or protect the confidentiality of any such requested or required disclosure. All costs of seeking any protective order or other designation and for contesting, limiting, or protecting the disclosure of Confidential Information in response to a valid request to or demand upon FMPA as the Receiving Party shall be borne and paid in full by Contractor. With respect to any disclosure made by FMPA as the Receiving Party pursuant to this section 3, FMPA shall furnish only that portion of the Confidential Information that it reasonably determines, in consultation with its legal counsel, is consistent with the scope of the request or demand to disclose and to exercise reasonable efforts to obtain assurance that confidential treatment will be accorded such Confidential Information.

(d) The Receiving Party has no obligation under this agreement with respect to Confidential Information which (1) is, or becomes publicly available without breach of this agreement by the Receiving Party; (2) is rightfully received by the Receiving Party without obligations of confidentiality; (3) is developed by the Receiving Party without breach of this agreement; or (4) is a public record which Receiving Party is obligated by Florida law to disclose to a third party in the opinion of legal counsel for the Receiving Party; provided however, the Confidential Information described in clauses (1), (2), (3), and (4) of this section shall not be disclosed, in response to a formal request, until 20 days after written notice (as defined in section 10) of the intent to disclose is given to

the Disclosing Party along with the asserted grounds for disclosure (unless pursuant to clause (4) only a shorter response is required by Florida law and the Disclosing Party is given advance notice of such response requirement by the Receiving Party not less than one business day prior to disclosure by the Receiving Party).

Section 7. Insurance

Contractor shall maintain, at its own expense, insurance during the performance of the Work under this contract, with the limits of liability of not less than the following:

Worker's Compensation: Statutory

Professional errors and omission liability: \$500,000

Automobile: \$500,000 Combined Single Limit

Contractor shall provide FMPA with Certificates of Insurance evidencing these insurance requirements and naming FMPA as an additional insured, except on the worker's compensation policy, prior to the start of work. Any deductibles or self-insured retentions on referenced insurance coverages must be borne by the Contractor. Any insurance or self-insurance programs maintained by FMPA do not contribute with insurance provided by the Contractor under the Agreement. Contractor shall provide FMPA with at least 10 days' notice of cancellation of any such insurance. At no time shall Contractor be without insurance in the above amounts during any performance related to this contract.

Section 8. Indemnification

To the fullest extent permitted by law, the Contractor, its heirs, successors and assigns shall indemnify and hold harmless FMPA, its successors and assigns, and its employees, against any and all claims, suits or actions at law, regardless of cause and/or all damages, costs and judgments (including reasonable attorneys' fees), incurred by FMPA arising from the negligence of Contractor while performing work under this Agreement. The liability of the Contractor is full and complete in all respects and subcontracting any part of the work shall not relieve it of primary liability.

Section 9. General Terms and Conditions

- (a) Any notices given pursuant to this agreement shall be in writing, delivered to the address set forth in the introductory clause of this agreement, and shall be considered given when received.

- (b) No term of this agreement shall be deemed waived, and no breach of this agreement excused, unless the waiver or consent is in writing signed by the other party granting such waiver or consent.
- (c) If any provision of this agreement is determined to be illegal or unenforceable, such term or provision shall be deemed stricken, and all other terms and provisions shall remain in full force and effect.
- (d) This agreement shall be governed by the laws of the State of Florida. All controversies, claims or disputes arising out of this agreement shall be brought exclusively in appropriate court in Leon County, Florida.
- (e) In the event that either party is required to enforce the terms of this agreement by court proceedings or otherwise, the prevailing party of such proceedings shall be entitled to recover from the non-prevailing party all fees and costs incurred, including reasonable attorney's fees and costs and expenses for trial, alternative dispute resolution and appellate proceedings.

IN WITNESS WHEREOF, the parties have duly executed this agreement as of the date first stated in the introductory paragraph.

FLORIDA MUNICIPAL POWER AGENCY Contractor

By: _____

By: _____

Schedule A

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as a place holder for awarded vendor's pricing information.

