

**Bidding Rules for  
Duke Energy Ohio, Inc.’s  
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 for Duke Energy Ohio (hereafter referred to as “Duke” or “DEO”) to procure competitive retail electric service for percentage of income payment plan (“PIPP”) program customers of Duke Energy Ohio.

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.Duke-EnergyOhioPIPP-RFP.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 up for bid in the RFP.

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:

- (i) facilitate a more competitive process,
- (ii) make any necessary corrections and/or clarifications,
- (iii) account for any change in the products to be procured,
- (iv) conform to any change in state or federal law or rule, and
- (v) apply any change deemed necessary at the discretion of the PIPP RFP Manager.

Such modifications will be carried out in consultation with Duke Energy Ohio 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 PIPP RFP Manager can be contacted by sending an email to [Duke-EnergyPIPP-RFPManager@crai.com](mailto:Duke-EnergyPIPP-RFPManager@crai.com).

The full contact information for the PIPP RFP Manager is as follows:

Attn: Robert Lee, Vice President / DEO PIPP RFP Manager  
CRA International, Inc.  
200 Clarendon Street, T-9  
Boston, MA 02116-5092  
Phone: 617.425.3384  
[Duke-EnergyPIPP-RFPManager@crai.com](mailto:Duke-EnergyPIPP-RFPManager@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. 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 Duke Energy Ohio.

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 Duke Energy Ohio.

Duke Energy Ohio 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 the entire PIPP Load in the RFP.

## **4. PRIOR TO THE OPEN OF THE BIDDING PERIOD**

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

Duke Energy Ohio will make available certain information to prospective bidders prior to the start of the bidder application process. This information will be posted on the Information Website.

#### **4.1.1. Data**

Duke Energy Ohio will provide:

- Historical shopping and non-shopping SSO load data for the most recent three-year period available
- Historical hourly load data for total retail load and PIPP Load
- Historical switching statistics and historical load profiles
- PLC NSPL data
- Information on the calculation of the Benchmark price for the RFP

#### **4.1.2. Product Size**

Prior to the Application Due Date, the PIP 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.

Prospective bidders will be required to:

- By the Application Due Date, 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 Duke within three (3) days following the close of the RFP.
- Demonstrate that they are a Competitive Retail Electric Service ("CRES") provider.
- 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 bidding process.
- 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 Duke Energy 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.

Prior to submitting a bid, prospective suppliers must submit Pre-Bid Security in the amount specified by the PIPP RFP Manager based on the information provided 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 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 PIPP RFP Manager no later than the Application due date and approved by Duke Energy Ohio. Duke 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) calendar 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 if the bidder has not won.
- After the bidder has signed the Master PIPP Supply Agreement and has complied with all creditworthiness requirements of the Master PIPP Supply Agreement.

Duke Energy Ohio 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, submit those changes in an electronic, red-lined version by the Application Due Date.

The PIPP Supplier Applications must be submitted to the PIPP RFP Manager no later than 12:00 p.m. noon prevailing Eastern Time on the Application Due Date. Prospective bidders will be notified by the PIPP RFP Manager no later than three (3) days after the Application Due Date whether they succeeded in becoming a Registered Bidder.

#### **4.3. Benchmark Price**

Before the Bid Window opens, the PIPP RFP Manager will inform all Registered Bidders of the Benchmark Price for the RFP product. 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.

#### **4.4. Extraordinary Events**

The RFP Manager, in consultation with the Duke Energy Ohio, 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. Only Registered Bidders are permitted to participate in the PIPP RFP. Registered Bidders will submit their bid in the RFP by accessing the PIPP 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 PUCO has issued an Order on the RFP results.

If the Bid Submission Form is incomplete, illegible, contains inconsistencies or errors, or otherwise is not considered conforming by the PIPP RFP Manager, the PIPP 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 PIPP RFP Manager and Duke Energy Ohio 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
- 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 CLOSSES**

### **6.1. Notification of Results**

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

- Whether or not the any of the PIPP RFP rules were violated in such a manner as to invalidate the PIPP 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 Duke Energy Ohio will execute the Master PIPP Supply Agreement no later than three (3) days following the close of the PIPP RFP once the specific pricing information and load obligations have 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 Duke Energy Ohio exercises its 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 Duke.

In addition, the winning bidder will be liable for damages incurred by Duke, 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 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 submit bids through the PIPP 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.

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 PIPP 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 PIPP RFP Manager at [Duke-EnergyPIPP-RFPManager@crai.com](mailto:Duke-EnergyPIPP-RFPManager@crai.com).

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

A bidder should contact the PIPP RFP Manager if it has questions or problems at [Duke-EnergyPIPP-RFPManager@crai.com](mailto:Duke-EnergyPIPP-RFPManager@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 tentative 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 and all Supplemental RFP bids are considered binding up to and through any PUCO Order on the results of the Supplemental RFP.

#### **10.2. PIPP Supply Requirements to be Offered to Existing SSO Suppliers**

If, after the attempts above to procure PIPP Load, the PIPP Load remains unfilled, the necessary PIPP Load requirements will be offered to current Duke Energy Ohio SSO Suppliers. These suppliers will have won tranches in the current or a prior Duke Energy Ohio CBP auction. An SSO Supplier will be considered a current SSO Supplier from the conclusion of the CBP auction in which such supplier won tranches until the termination of the prevailing Master SSO Supply Agreement. Suppliers will be asked to submit a best and final price at which they would be willing and able to supply the full PIPP load up for bid. The lowest offered price will be submitted to the PUCO for approval.

#### **10.3. 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 through PJM-administered markets at prevailing day-ahead zonal spot prices, and, unless instructed otherwise by the PUCO, Duke Energy Ohio will not enter into hedging transactions to attempt to mitigate the associated price or volume risks to serve these tranches.

#### **10.4. PIPP Supplier Default Prior to or During the Delivery Period**

In the event the PIPP supplier selected from the RFP defaults prior to or during the delivery of PIPP Load requirements, Duke Energy Ohio will implement a contingency plan for PIPP Load. Under that plan, PIPP Load supply requirements will be met either by current SSO Suppliers or through PJM-administered markets as described above.

Additional costs incurred by Duke Energy Ohio 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, Duke Energy Ohio or the PIPP 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 Duke Energy Ohio to hold future solicitations, or harm consumers, bidders, or applicants.

Confidential Information regarding the RFP may include (but is not limited to): the list of Registered Bidders and all non-public reports of results and announcements made by the PIPP 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 PIPP RFP Manager, the PUCO, and Duke Energy Ohio 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, Duke Energy Ohio will endeavor to notify the bidder in advance of such disclosure. In any event, neither Duke Energy Ohio nor the PIPP 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, Duke Energy Ohio and the PIPP 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 Duke Energy Ohio territory with respect to bidding in the PIPP RFP, except as disclosed and approved by the PIPP RFP Manager in its PIPP Supplier Application.
- Before obtaining any sealed 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.

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

If a bidder cannot make all the certifications, the PIPP 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 PIPP 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 PIPP RFP Manager regarding certifications required in the PIPP Supplier Application, the PIPP 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 Duke Energy Ohio 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 PIPP RFP Manager will make a recommendation Duke Energy Ohio regarding sanctions. The imposition of such sanctions will be at the discretion of Duke.

### **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 Duke Energy Ohio nor the PIPP 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 Duke Energy Ohio, nor the PIPP 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 Duke and the PIPP 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 Duke's Property**

All bids submitted by bidders participating in the PIPP RFP process will become the exclusive property of Duke 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. RFP 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 PIPP RFP Manager) and associated documentation, including but not limited to these Bidding Rules, and the screen formats and forms designed by the PIPP RFP Manager (the "RFP Software"), are proprietary to the PIPP RFP Manager and all rights, title, and interest to the RFP Software remain with the PIPP RFP Manager. The PIPP 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 PIPP RFP Manager's sole discretion that the

Registered Bidder is in breach of this section 12.6, the PIPP 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 PIPP 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.