

Bidder Notice of Intent Package

2023 ALLETE Clean Energy Request for Bid (RFB)

**Date of Issuance:** January 3

**Notice of Interest Deadline:** January 10

**Shortlist / NDA Execution:** January 10 – 17

**Bid Submission Deadline:** January 24

**Contract Negotiation:** Q1/Q2 2023

Table of Contents

Overview

Instructions

Coversheet and Checklist

Form 1 – Primary and Secondary Representatives

Form 2 – Intended Offer Summary

Form 3 – Availability for 1 -1 Discussion

Confidentiality Agreement / NDA

Overview

ALLETE Clean Energy (ACE) - Our mission is to deliver sustainable solutions that help our customers, which include some of the largest corporations in the United States, achieve their climate-action goals.

ALLETE Clean Energy leverages deep development and operating experience, industry knowledge, and innovation to bring clean energy to customers. It has a growing reputation as a respected national player in wind energy, and continues to build business relationships, grow its capabilities, and expand to new geographies.

ACE is an Independent Power Producer (IPP) that delivers clean energy solutions for electric utilities, cooperatives, municipalities, independent power marketers, and large end-users across the United States. ALLETE Clean Energy’s entrepreneurial spirit and talented team fuel the company’s passion for clean energy project development, construction and efficient operations. ACE owns and has built-transferred over 1,500 MW of operating/under construction capacity in five major energy markets and eight states across the U.S.

ALLETE Clean Energy developed the Caddo wind site in south-central Oklahoma in 2020-21. Caddo is one of ALLETE Clean Energy’s two largest wind sites and has an up-to 80MW open position with immediate opportunities for supplying prospective customers’ needs. **ALLETE Clean Energy requires unit-contingent delivery at the Caddo project node.** A 12x24 wind production profile will be provided after execution of the NDA.There is a strong preference for a 10-12 year contract, but other submittals would be entertained.

The ALLETE Clean Energy team will accept indicative responses and look to set up 1-1 consultations with prospective bidders in order to discuss product opportunities and contract terms.

The information gathered by ACE will be indicative only and is not binding on ACE or any of its affiliates. Responses will become the property of ACE. This RFB is neither a contract offer, nor a request for proposals and does not commit ACE to award a contract, pay any costs incurred in preparing a response, or to procure or contract for services or supplies. ACE reserves the right to discontinue or modify the RFB process at any time, and makes no commitments, implied or otherwise, that this process will result in a business transaction or negotiation with one or more respondents. All costs associated with responding to this RFB will be solely at respondents’ expense.

**Submission Instructions**

The Bidder Qualification Application has been created with editable fields. Information should be entered directly into the application provided. Completed forms and questions should be sent to: **EnergyMarketing@alletecleanenergy.com**

The Bidder Qualification Application Forms are in the following pages.

**Coversheet and Checklist**

**Date**

Click here to enter a date.

**Name of Prospective Bidder**

Click here to enter text.

**Primary Representative Name**

Click here to enter text.

**The following are enclosed**

[ ]  Coversheet and Checklist

[ ]  Form 1 - Primary and Secondary Representatives

[ ]  Form 2 – Indication of Product Interest

[ ]  Form 3 – Availability for 1-1 Consultation with ACE Team

[ ]  Confidentiality Agreement / NDA

[ ]  Other Bidder Provided Forms, or Attachments if desired (specify below)

Click here to enter text.

**Form 1 – Primary and Secondary Representatives**

**Primary Representative**

First and last Name Click here to enter text.

Title Click here to enter text.

Full Legal Name of Organization Click here to enter text.

Phone Click here to enter text.

Email Click here to enter text.

Street Address Click here to enter text.

**Secondary Representative**

First and last Name Click here to enter text.

Title Click here to enter text.

Full Name of Organization Click here to enter text.

Phone Click here to enter text.

Email Click here to enter text.

Street Address Click here to enter text.

**Form 2 – Indication of Product Interest**

**Indicative Product-Level Interest**

[ ]  Energy Only Products

[ ]  Bundled Energy and Capacity Products

**Indicative Term Interest**

[ ]  Less Than 5 year Terms

[ ]  5 to 10 Year Terms

[ ]  10 to 15 Year Terms

[ ]  Other, please specify Click here to enter text.

**Summary of Sought Products (Fixed Energy/Capacity PPA, etc)**

Click here to enter text.

**Form 3 – Availability for 1 -1 Consultations with ACE Team**

**Please Indicate Multiple Available Time Slots**

Click here to enter text.

**NON-DISCLOSURE AGREEMENT**

This Non-Disclosure Agreement (“Agreement”) is entered into as of [\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_], by ALLETE Clean Energy, Inc., a Minnesota corporation ("ACE"), and [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_] ("Counterparty"). ACE and Counterparty are referred to individually as a "Party" and collectively as the "Parties".

**WHEREAS**, the Parties may enter into discussions regarding a potential energy marketing, energy sales and offtake transactions (the “Project”);

**WHEREAS**, the Parties anticipate that, in the course of discussions, each may disclose to the other certain non-public, confidential and/or proprietary information, including without limitation, business plans, proposals or other information (hereinafter referred to as “Confidential Information”); and

**WHEREAS**, the Parties wish to define their respective rights and obligations with respect to such Confidential Information;

 **NOW THEREFORE**, in consideration of the mutual promises and covenants contained herein, the Parties agree as follows:

1. As used herein, the term "Confidential Information" means any information disclosed by either Party related to the Party or its Affiliates (as defined in this Section 1) and designated by the disclosing Party as “CONFIDENTIAL” or “PROPRIETARY” at the time of disclosure or which should reasonably be known to be confidential or proprietary by the receiving Party. If a Party has oral information that it desires to be treated as Confidential Information, it shall so state to the receiving Party prior to disclosure and obtain the receiving Party’s agreement to receive it on a confidential basis. Confidential Information may include reports and analyses, documents, technical and economic data, studies, forecasts, trade secrets, research or business strategies, customer information, financial or contractual information or other written or oral information regarding a Party or its Affiliates. Confidential Information may be in any form whatsoever, including but not limited to writings, computer programs, logic diagrams, component specifications, drawings or other media. Confidential Information shall also include the fact that the Parties are considering the Project, and the status and subject matter of all negotiations between the Parties. As used in this Agreement, (a) the term “Representative” means, as to any person, such person’s Affiliates (as defined below) and its and their directors, officers, members, managers, employees, agents, consultants, sources of funding, advisors (including, without limitation, financial advisors, legal counsel and accountants) and controlling persons, and (b) the term “Affiliates” means all entities that are controlling, controlled by or under common control with a Party.

2. Notwithstanding the provisions of Section 1 above, the term "Confidential Information" shall not include, and the receiving Party shall not be under any obligation to maintain in confidence or not use, any information (or any portion thereof) disclosed to it by the disclosing Party to the extent that the receiving Party can demonstrate that such information:

 (i) is in the public domain at the time of disclosure; or

(ii) following disclosure by the disclosing Party, becomes generally known or available through no breach of this Agreement by the receiving Party; or

(iii) is known, or becomes known, to the receiving Party from a source other than the disclosing Party or its Representatives, provided that the source is not known to the receiving Party to be subject to an obligation of confidentiality; or

(iv) is independently developed by the receiving Party without violating any of its obligations under this Agreement.

Confidential Information shall not be deemed to fall within the exceptions of subparts (i) to (iv) above merely because it is included in a document which also includes information that does fall within such exceptions.

The receiving Party shall be permitted to disclose Confidential Information required to be disclosed by it or its Affiliates pursuant to applicable law or regulation, a subpoena or order of a court, or for evidentiary purposes in any relevant action, proceeding or arbitration to which the receiving Party or any of its Representatives is a party, so long as receiving Party uses commercially reasonable efforts to obtain a protective order or similar confidential treatment of such Confidential Information prior to such disclosure. In the event that the receiving Party receives a request to disclose any Confidential Information under such subpoena, order or otherwise, the receiving Party shall use commercially reasonable efforts to: (a) notify the disclosing Party thereof, (b) consult with the disclosing Party on the advisability of taking steps to resist or narrow such request, and (c) reasonably cooperate with the disclosing Party in any attempt that it may make to obtain an order or other reliable assurance that confidential treatment will be accorded to the Confidential Information.

Further, the receiving Party shall be permitted to disclose that portion of the Confidential Information that it is advised by its outside counsel that it is legally required to disclose: (i) to be in compliance with any applicable law or regulation and/or (ii) to any regulatory, self-regulatory or legislative body of competent jurisdiction in connection with any regulatory or legislative docket, report, audit or other request for information, so long at it uses commercially reasonable efforts to obtain a protective order or similar confidential treatment of such Confidential Information prior to such disclosure.

3. The receiving Party shall keep the Confidential Information confidential and shall use the Confidential Information solely in connection with its assessment of the Project. The receiving Party shall not disclose the Confidential Information to any person, except that the receiving Party may disclose Confidential Information to any of its Representatives who require access to such information in connection with the evaluation of the Project, or who otherwise have reason to know (including legal, compliance, credit, accounting, and audit personnel and any other personnel who perform similar control and/or risk management functions in the normal course of performing their respective duties) the Confidential Information. Before disclosing any Confidential Information to its Representative, the receiving Party shall inform such Representative of the confidential or proprietary nature thereof and of the receiving Party's obligations under this Agreement. The receiving Party shall be responsible for any use or disclosure of Confidential Information by any of its Representatives, and shall indemnify the disclosing Party with respect to all losses, claims and damages arising out of a breach by the receiving Party or any of its Representatives of the terms of this Agreement.

4. All rights to Confidential Information disclosed pursuant to this Agreement are reserved to the disclosing Party. No license or conveyance of any rights relating to the Confidential Information is granted or implied by the disclosing Party to the receiving Party. The receiving Party acknowledges that the disclosing Party shall have the right to restrict the receiving Party’s access to, and communications with, personnel of the disclosing Party and relating to the Project.

5. This Agreement shall commence as of the date first set forth above and shall continue in effect until the earlier of (i) two years from the date hereof, or (ii) written notice from either Party to the other Party stating that it is no longer interested in pursuing the Project. The obligations of confidentiality, non-disclosure and non-use contained herein shall survive and continue for a period of two (2) years after termination or expiration of this Agreement.

6. Nothing in this Agreement shall obligate the disclosing Party to disclose any Confidential Information to the receiving Party, and any disclosure of Confidential Information shall be at the disclosing Party’s sole discretion. This Agreement does not constitute a commitment or promise by the disclosing Party to proceed with the Project, nor does it grant to the receiving Party any rights whatsoever with respect to the Project. The disclosing Party reserves the right at any time to terminate negotiations with the receiving Party or to enter into negotiations with third parties regarding a project identical, or similar, to the Project. Nothing in this agreement creates any agency, partnership or joint-venture relationship between the Parties.

The disclosing Party does not make any representation or warranty as to the quality, accuracy or completeness of any Confidential Information. Neither the disclosing Party, nor its Representatives, will have any liability relating to or arising from any use of, or reliance upon, the Confidential Information; and the receiving Party hereby releases, indemnifies and holds the disclosing Party harmless with respect to the receiving Party’s or its Affiliates’ or Representatives’ use of or reliance upon the Confidential Information. If the Parties do elect to proceed with a Project, all agreements, representations, warranties, covenants and conditions with respect thereto will be set forth in a separate written agreement to be negotiated, and if agreement can be reached, executed by the Parties.

7. To the extent legally permissible, as promptly as practicable but in any event within 30 days after the disclosing Party’s written request, the receiving Party shall return to the disclosing Party or destroy all Confidential Information in the possession of the receiving Party or its Representatives, including all copies of such Confidential Information, all notes or other documents with respect to or reflecting such Confidential Information, and all materials derived from such Confidential Information. Notwithstanding the foregoing, the receiving Party shall be entitled to retain a copy of such Confidential Information in its Legal Department to the extent such retention is consistent with the receiving Party’s policies; provided that all such retained Confidential Information shall remain subject to the terms of this Agreement. The receiving Party shall not be deemed to have retained or failed to return or destroy any Confidential Information if Confidential Information received or stored in digital format is deleted from local hard drives so long as no attempt is made to recover such Confidential Information from servers or back-up sources, provided that any such retained Confidential Information shall remain subject to the terms of this Agreement.

8. This Agreement is binding on, and inures to the benefit of, the Parties’ respective successors and permitted assigns. This Agreement may not be assigned by either Party without the prior written consent of the other Party except in connection with the sale of all or substantially all of the business or assets of the assigning Party. Any purported assignment without the consent required hereunder shall be null and void.

9. Without prejudice to the rights and remedies otherwise available to the disclosing Party, the disclosing Party shall be entitled to equitable relief by way of injunction if there is a breach or threat of a breach of any of the provisions of this Agreement by the receiving Party. The Parties agree and acknowledge that damages would not be an adequate remedy in the event of a breach of this Agreement. In no event shall either Party be liable for any punitive, incidental, consequential, special or indirect damages.

10. Counterparty hereby confirms that it is not acting as a broker for or Representative of any person and is considering the Project only for its own account.

11. All notices and other communications hereunder shall be in writing and shall be deemed given (as of the time of delivery or, in the case of an email communication, confirmation of reciept) if delivered personally, emailed or sent by nationally recognized overnight courier (with proof of delivery) to the Parties at the following addresses or such other address as a Party may specify by like notice:

If to ALLETE Clean Energy, Inc.:

ALLETE Clean Energy, Inc.
30 West Superior Street

Duluth, MN 55802

Attention: Legal Department
Email: legal@alletecleanenergy.com

If to Counterparty:

[\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_]

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Attention: \_\_\_\_\_\_\_\_\_\_\_\_\_
Email: \_\_\_\_\_\_\_\_\_\_\_\_\_

12. This Agreement shall be governed by the laws of the State of Minnesota, without regard to the conflicts of law principles thereof, and any litigation arising out of or in connection in any way with this Agreement shall take place in a State or Federal court of competent jurisdiction in Minnesota.

13. This Agreement may be executed in counterparts, each of which shall be deemed to be an original and all of which shall constitute one and the same document.

14. This Agreement comprises the full and complete agreement of the Parties hereto with respect to the disclosure of the Confidential Information and supersedes and cancels all prior communications, understandings and agreements between the Parties hereto, whether written or oral, expressed or implied. No amendments, changes or modifications to this Agreement shall be valid except if the same are in writing and signed by a duly authorized representative of each of the Parties hereto.

15. The provisions of this Agreement are severable, and if any one or more of such provisions is determined to be judicially invalid or unenforceable, the remaining provisions shall nevertheless be binding and enforceable.

IN WITNESS WHEREOF the Parties have signed this Agreement as of the date first set forth above.

**[\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_] ALLETE CLEAN ENERGY, INC.**

By: By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Name:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Name:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_