

**REQUEST FOR PROPOSALS  
TO DEVELOP A TEN MEGAWATT  
FUEL CELL  
GENERATION PROJECT**

***FEBRUARY 1, 2005***

**Prepared by  
Long Island Power Authority**

## TABLE OF CONTENTS

I.	Introduction & Background.....	1
II.	The Project.....	1
III.	Threshold Criteria.....	2
IV.	Project Development.....	2
V.	Qualifications of Respondents.....	2
VI.	Terms & Conditions of LIPA Purchases.....	3
VII.	Contents of Proposals.....	3
VIII.	Evaluation Criteria and Selection Process.....	5
IX.	Communication During RFP Process.....	7
X.	Proposer’s Conference.....	7
XI.	Notice of Intent to Submit Proposal.....	7
XII.	Submission of Proposals.....	8
XIII.	Target Schedule.....	8
XIV.	Miscellaneous.....	8
XV.	Limitations.....	9
XVI.	Contract Approval.....	10
XVII.	Debriefing of Unsuccessful Proposers.....	10

### APPENXIX A : TERMS AND CONDITIONS

#### INCLUDED ON LIPA RFP WEBSITE:

- Executive Order 127 Contractor Disclosure Forms
- MacBride Fair Employment Principles Form
- Non-Collusive Bidding Form
- Contingent Fee Certification
- State of New York Vendor Responsibility Questionnaire

**Request for Proposals to Develop a Ten  
Megawatt Fuel Cell Generation Project  
February 1, 2005**

The Long Island Power Authority (“Authority”) solicits proposals in response to this Request for Proposals (“RFP”) for the provision of capacity, associated energy, ancillary services and environmental attributes (“Products”) from a new ten (10) megawatt fuel cell generation project with a term of up to twenty (20) years. This RFP describes the project to be installed, the Products being sought, the proposal requirements, and the proposal evaluation process. **Responses to this RFP are due no later than 3 p.m. EST April 25, 2005.**

***I. Introduction and Background***

The Authority is a corporate municipal instrumentality and political subdivision of the State of New York, which through its subsidiary, LIPA (hereinafter Authority and LIPA are referred to collectively as “LIPA”) provides electric service to customers in Nassau County, Suffolk County, and the portion of Queens County known as the Rockaways in the State of New York. LIPA provides electric service over approximately 1,300 miles of underground and overhead transmission lines to over one million electric customers.

LIPA is interested in the development of a fuel cell project that will provide a nominal ten (10) megawatts of New York Independent System Operator (“NYISO”) qualified DMNC capacity by a qualified entity (“Proposer”), with the primary objectives of: reducing losses on LIPA’s transmission and distribution system; deferring transmission and distribution capital projects; mitigating emissions from existing generating plants on Long Island; and assisting LIPA in meeting its objectives related to the New York State Renewable Portfolio Standard. LIPA has identified a site on its system that it believes can accommodate the requested fuel cell generation project and can best meet LIPA’s objectives. LIPA will make the designated site available at no charge to the successful Proposer for a term of up to twenty (20) years under the terms and conditions of a Power Purchase Agreement (“PPA”) between LIPA and the successful Proposer.

***II. The Project***

Proposals must commit the Proposer to develop a 10 MW fuel cell generation project at the designated site and sell all Products produced from this facility to LIPA under the terms and conditions of a PPA. The proposed project shall meet each of the following requirements:

- a. **Site**: The project shall be located at LIPA’s 7D West Babylon Substation.
- b. **Commercial Operation Date**: The project shall achieve commercial operation no later than July 1, 2006 (April 1, 2006 is preferred).
- c. **Electric Distribution**: The facility shall be interconnected with LIPA’s electric distribution system at 480 volts or above.

- d. **Permittability**: The project shall be designed to be in compliance with all applicable federal, state and local permitting requirements.

### ***III. Threshold Criteria***

Each proposal must satisfy the following requirements in order to be considered and further evaluated by LIPA:

- a. Propose all Products for sale to LIPA under the terms and conditions of a PPA.
- b. Commitment that the proposal, including all pricing, is firm through December 31, 2005.
- c. Include a check for the \$2,000 as a Proposal Submittal Fee.
- d. Have at least three (3) years experience in the construction and operation of fuel cell projects.

### ***IV. Project Development***

LIPA requires Proposers to accept full responsibility for the cost and performance of developer activities such as: community relations and agreements with local authorities; financing; permitting; siting; construction; operation; maintenance; repair; and interconnection with existing infrastructure. LIPA will provide reasonable assistance to the selected Proposer with community relations and permitting activities.

The selected Proposer shall be responsible for the cost of the electrical interconnection of its proposed project with LIPA's electric distribution system. LIPA shall be responsible for the cost and preparation of any system impact studies associated with such electrical interconnection. The selected Proposer will be required to enter into a separate Interconnection Agreement with LIPA.

The selected Proposer shall also be responsible for all costs of the interconnection of its proposed project with the local gas distribution company ("LDC"). LIPA shall be responsible for providing the commodity gas for generation as well as for all gas transportation and LDC delivery charges. Appropriate milestones will be set and appropriate security will be required as set forth in the PPA to ensure that the required Commercial Operation Date ("COD") will be met. Failure to meet the COD will result in the assessment of appropriate liquidated damages, as specified in the PPA. During the term of the PPA, the project must meet all applicable New York ISO requirements. In particular, Proposers should indicate the extent to which its proposed project has the capability to provide regulation service.

### ***V. Qualifications of Proposers***

As part of its evaluation of proposals, LIPA will consider the financial soundness of the Proposer, including any proposed guarantor. Each Proposer shall be required to demonstrate to LIPA's satisfaction that it has the experience, ability, and commitment to finance, construct, own and operate the proposed project. Proposers must also have demonstrable experience and expertise in the areas of fuel cell project development, permitting, siting, construction and operation. Proposers who do not currently possess FERC market-based rate authority to make power sales at negotiated rates should indicate in its proposal whether there are any impediments to obtaining such

authorization prior to the commencement of the supply of Products. Additionally, Proposers are required to furnish all information requested in Sections VI and VII of this RFP in its proposal.

#### ***VI. Terms and Conditions of LIPA's Purchases***

LIPA expects to enter into a PPA with the selected Proposer, which will set forth a detailed description of the Products, the price, the term, security, the fact that all capacity supplied must be in compliance with all applicable New York ISO and FERC requirements, and other contract terms and conditions typically contained within PPAs. LIPA's preferred PPA ("LIPA PPA") will be available shortly after the Proposers Conference. Among other things, the LIPA PPA will include an availability provision that would require a billing adjustment in the event that the proposed project fails to meet a guaranteed monthly availability factor. Proposers must propose specific guaranteed monthly availability percentage(s). Proposers that take exception to the terms and conditions of the PPA must propose specific suggested language for each exception taken in its proposal. The nature and extent of exceptions, if any, taken to the LIPA PPA will be an important factor considered by LIPA during its evaluation of proposals.

#### ***VII. Contents of Proposals***

In order to be considered, proposals must contain, at a minimum, the following information:

- a. Name, address and telephone number of the Proposer (and name, address, telephone number, and e-mail address of the contact person for the Proposer in connection with its proposal), legal status of Proposer (corporation, partnership, limited liability company, etc.), date formed, jurisdiction of organization, and identification of any relevant affiliates. If the Proposers proposes to have a guarantor guaranty its obligations, the same information as above shall be provided with respect to the guarantor. If a consortium provides a proposal, the same information as above shall be provided for each member of the consortium.
- b. A summary description of Proposer's business and history, including its experience in the areas of development, financing, construction, and operation of fuel cell projects. The Proposer shall also describe its familiarity and experience with NYISO requirements and its membership status with the NYISO.
- c. Disclosure of any instances where Proposer, any of its officers, directors or partners, any of its affiliates, or its proposed guarantor (if any) defaulted or was deemed to be in noncompliance with any obligation related to the sale or purchase of power (capacity, energy and/or ancillary services), transmission, or natural gas, or was the subject of a civil proceeding for conversion, theft, fraud, business fraud, misrepresentation, false statements, unfair or deceptive business practices, anti-competitive acts or omissions, or collusive bidding or other procurement- or sale-related irregularities.
- d. Disclosure of any instances where the Proposer, any of its officers, directors or partners, any of its affiliates, or its proposed guarantor (if any) was convicted of (i) any felony, or (ii) any crime related to the sale or purchase of power (capacity, energy and/or ancillary services), transmission, or natural gas, conversion, theft, fraud, business fraud,

misrepresentation, false statements, unfair or deceptive business practices, anti-competitive acts or omissions, or collusive bidding or other procurement- or sale-related irregularities.

- e. Information indicating the Proposer's and any guarantor's financial condition and evidence of creditworthiness. Proposer must provide its and any guarantor's most three (3) recent audited financial statements. If audited financial statements are not available, please explain why.
- f. A full and complete description of the Proposer's plans for the generation source that is proposed to be constructed, including without limitation, the equipment to be utilized; size of each generating unit in kilowatts; commercial operation date; and a proposed detailed schedule for permitting, construction, and commercial operation of the new fuel cell project.
- g. A full and complete description of the Proposer's plans for permitting the project in support of the above requested schedule.
- h. A full and complete description of Proposer's financing plan for the project including: a Sources and Uses of Funds Statement for project development through commercial operation; Project Development/Construction Draw Down Schedule; commitment letter from equity provider(s); and commitment letter from debt provider(s).
- i. A statement either accepting the LIPA PPA or a detailed listing of all exceptions taken to the LIPA PPA including specific alternate language for each exception taken.
- j. A full and complete description of the Products being proposed for purchase by LIPA; the proposed pricing (in \$/kW-month for capacity and \$/MWh for related energy and environmental attribute charges); and proposed contract term (up to twenty (20) years), but no shorter than five years. A statement that all capacity supplied will be in compliance with all applicable NYISO and FERC requirements.
- k. **A statement signed by an authorized representative of the Proposer that the proposal and all proposed pricing is firm through December 31, 2005.**
- l. A check made payable to the Long Island Power Authority in the amount of \$2,000 (Two Thousand Dollars) as a Proposal Submittal Fee. Such fee will not be refunded under any circumstances.
- m. Identify any subcontractors that may be utilized as part of your firm's proposed team. For each proposed subcontractor provide contact information similar to that specified in item a. above, as well as a detailed description of what work each subcontractor will perform and a history of each subcontractor's experience performing similar work. Identify the nature of any potential conflict of interest the proposer may have in performing work for LIPA.
- n. Identify the nature of any potential conflict of interest the proposer may have in performing work for LIPA.

- a. State whether the firm has ever represented LILCO or Brooklyn Union Gas Company and in what capacity. Also state whether your firm has ever represented or currently represents MarketSpan or KeySpan Energy, or any of its subsidiaries, and in what capacity. Additionally, state whether your firm represents any publicly owned or investor-owned electric utility, independent power producer, natural gas supplier, or transmission companies. If so, state the name of each such client and the nature of your representation.
  - b. Discuss fully any conflicts of interest, actual or potential, which might arise in connection with the Proposer's involvement with LIPA. If your firm believes that a conflict of interest might arise, please describe how such conflict would be resolved.
- o. State whether your firm represents any party that is or may be adverse to LIPA.

The Proposer must certify in writing that its representation of LIPA will not create any conflict of interest involving that firm.

- p. Signed and completed Executive Order 127 Contractor Disclosure forms (2), as well as, MacBride Fair Employment Principles, Contingent Fee and Non-Collusive Bidding and vendor Responsibility Questionnaire and Certification forms. Respondents must certify that all information provided to LIPA with respect to Executive Order 127 is complete, true and accurate.

Proposers must indicate in their proposal what information, if any, is proprietary and confidential. Proposers are hereby advised that LIPA is subject to the New York State Freedom of Information Law ("FOIL"). Material marked "Confidential and Proprietary" will be treated as such to the extent consistent with LIPA's legal obligations under the FOIL, other applicable law, regulation or legal process, and will not be disclosed by LIPA to third parties except as necessary for the evaluation of proposals.

### **VIII.** Evaluation Criteria and Selection Process

- a. **Proposal Evaluation Criteria:** Each proposal that meets the above Threshold Criteria will be subject to a qualitative and quantitative evaluation by a Selection Committee of LIPA staff based upon an overall assessment of its merits using the following evaluation criteria, not necessarily listed in the order of importance:
  - All-in costs to LIPA's ratepayers;
  - The fit of the project to LIPA's need for capacity, energy, ancillary services and environmental attributes;
  - Risk of cost increases to LIPA's ratepayers resulting from factors such as technical attributes of project and contractual obligations imposed on LIPA;
  - Proposer's experience in developing and operating similar projects;
  - Proposer's creditworthiness;

- The quality of Proposer’s Financing Plan;
- Prospects for deferring transmission and distribution capital expenditures;
- Projected reduction in losses;
- Improvement to local reliability;
- Project permissibility;
- Product deliverability;
- Furtherance of supplier diversity;
- Impact on the environment;
- Exceptions taken to terms and conditions in LIPA PPA; and
- Ability to meet LIPA’s expressed COD.

b. **LIPA Preferences:** LIPA will give proposals containing the following attributes (not necessarily listed in any order of importance) more favorable consideration:

- Projects that provide a high availability factor;
- Proposals in which the Proposer demonstrates a willingness to accept the terms and conditions set forth in the LIPA PPA;
- Proposals from Proposers that do not currently own any substantial generation on Long Island since it is LIPA’s objective to encourage the development of a fully competitive wholesale generation market on Long Island; and
- Proposals from Proposers that commit to constructing a fuel cell manufacturing and maintenance facility in New York State (preferably on Long Island) and that agree to create and maintain a specific amount of new jobs at such facility.

**c. Selection Process**

The Selection Committee will initially review all proposals to determine whether the Threshold Criteria has been met. Any proposal that does not meet the Threshold Criteria will be rejected.

The Selection Committee will evaluate all responsive proposals based on the criteria enumerated in Section VI (A), as referenced above. The Selection Committee may afford firms the opportunity to clarify proposals for the purpose of assuring a full understanding of their responsiveness to the RFP.

LIPA may conduct interviews of Proposers found to be most qualified to perform the services required, based upon the criteria listed in this RFP. If so, Proposers will be notified in advance of the proposed interview date.

Prior to award of any contracts(s), the Selection Committee will conduct a vendor responsibility determination and may require eligible Proposers to answer questions and provide additional information to supplement the information provided in the Exhibit B Vendor Responsibility Questionnaire to assist the Selection Committee in making such a determination.

LIPA shall not award a contract to a Proposer found to be non-responsible, as defined in New York State Executive Order Number 127, signed by Governor Pataki on June 16, 2003, if such prior finding was due to the intentional provision of false or incomplete information to a covered agency or authority with respect to such Order.

All Proposers will be notified in writing once a Proposer has been selected.

***IX. Communication during RFP Process***

To facilitate communications between LIPA and potential Proposers and to ensure that all Proposers have access to the same information, Mr. Michael Standridge, Director of Corporate Contracts & Procurement, has been designated to be LIPA's single point of contact with respect to communications related to this RFP. Mr. Standridge's telephone number is (516) 719-8620 and his e-mail address is [mstandridge@lipower.org](mailto:mstandridge@lipower.org). Questions regarding this RFP should be submitted in writing via e-mail to Mr. Standridge on or before the April 11, 2005 deadline for submission of questions. Responses to any questions received will be posted on LIPA's website at [www.lipower.org](http://www.lipower.org) on a continuing basis. No other communication of questions and answers will be made.

**Any contact, beyond that allowed in this RFP, with LIPA Board members, staff or LIPA consultants during the pendency of this RFP shall be grounds for disqualification from the RFP process.**

***X. Proposers' Conference***

LIPA will host a Proposers' Conference for this RFP on March 1, 2005 at 10:00 a.m. at LIPA's office located at 333 Earle Ovington Boulevard (2<sup>nd</sup> floor), Uniondale, New York. .

It is requested that you notify LIPA via e-mail to Mr. Michael Standridge by February 22, 2005 if you will be attending the conference. Notification of attendance should provide the names and titles of all attendees. **Attendance at the Proposers' Conference is voluntary. Attendance is not required as a prerequisite to submitting a proposal in response to this RFP.**

***XI. Notice of Intent to Submit Proposal***

All potential Proposers are strongly encouraged to provide a **Notice of Intent to Submit Proposal** to LIPA by 5 p.m., Eastern Standard Time (EST) by April 11, 2005. Such notice should contain the Proposer's name, address, phone number, e-mail address and contact person. Submission of a Notice of Intent is not a prerequisite for submitting a proposal in response to this RFP.

***XII. Submission of Proposals***

Six copies of the Proposer’s proposal and a CD-ROM of your proposal in searchable text format (e.g., Word, searchable PDF must be mailed, sent by courier, or hand-delivered so that they are received by **3:00 p.m. Eastern Standard Time on April 25, 2005** at the following address:

Long Island Power Authority  
Attn: Jim Peterson- Fuel Cell RFP  
Director of Power Markets Contracts  
333 Earle Ovington Blvd., Suite 403  
Uniondale, New York 11553

**Proposals received after the above date and proposals sent by fax or by electronic means will not be accepted.**

***XIII. Target Schedule***

The proposed schedule of key events and target dates for this RFP is as follows:

<b>Events</b>	<b>Target Date</b>
RFP Issuance	February 1, 2005
Submission of Notice of Intent to Attend Proposers’ Conference	February 22, 2005
Proposers’ Conference	March 1, 2005
LIPA PPA Available to Proposers	March 8, 2005
Notice of Intent to Submit Proposal Due	April 11, 2005
Deadline for Submission of Questions	April 11, 2005
<b>RFP Responses Due</b>	<b>April 25, 2005</b>
Project Awarded	June 23, 2005
Commercial In-Service Date	July 1, 2006

***XIV. Miscellaneous***

While LIPA has endeavored to supply useful information in this RFP, LIPA makes no representation or warranty, express or implied, as to the accuracy or completeness of any information contained herein or otherwise provided to any Proposer by or on behalf of LIPA. LIPA shall have no liability relating to or arising from any such information or the use thereof. Proposers are encouraged to conduct their own investigation and analysis of any and all information contained herein or otherwise provided by or on behalf of LIPA. This RFP is not an offer or commitment and is not capable of being accepted to form a binding agreement. LIPA reserves the right, in its sole discretion, to withdraw or modify this RFP at any time, to reject any or all proposals for any reason, and to enter into further discussions or interviews with any one or more Proposers.

Any questions concerning this RFP should be directed to Mr. Standridge.

## ***XV. Limitations***

### **A. General**

1. This RFP does not commit LIPA to award a contract, pay any costs associated with the preparation of a proposal, or procure or contract for any project whatsoever. LIPA reserves the right, in its sole discretion, to accept or reject any or all responses to this RFP, to negotiate with any and all considered Proposers, or to cancel this RFP in whole or in part. LIPA reserves the right to request additional information from any or all Proposers.
2. Proposers may be requested by LIPA to clarify the contents of their proposal. Other than to provide information as may be required by LIPA, no Proposer will be allowed to alter its proposal after the proposal due date.
3. All material submitted in response to this RFP will become the sole property of LIPA.
4. From among the proposals received, LIPA may select one proposal, or it may decline to accept any or all proposals.
5. A Proposer may be required to participate in negotiations and to submit any price, technical or other revisions to its proposal which may result from such negotiations.
6. Non-responsive proposals include, but are not limited to, those that:
  - does not conform with the RFP requirements and instructions;
  - are conditional, incomplete, indefinite or ambiguous;
  - have no signature or an improper one;
  - are not timely submitted as set forth in this RFP; or
  - are submitted via facsimile or e-mail.
7. TAX CERTIFICATION REQUIREMENT: Under a new law that applies to all contracts issued on or after January 1, 2005, the successful bidder will be required to certify in writing either that it and its affiliates, subcontractors and affiliates of the subcontractors are registered with the New York State Department of Taxation and Finance to collect sales and use tax, or that they are not required to register. Registration is required if the successful bidder, affiliates, subcontractors and the affiliates of their subcontractors have made sales of tangible personal property or taxable services within New York State having a cumulative value of over \$300,000 during the last year. Therefore, please indicate in your proposal whether you are currently registered with the New York State Department of Taxation and Finance to collect sales and use tax.

LIPA may waive minor informalities or irregularities that are merely a matter of form and not of substance, the correction of which would not be prejudicial to other Proposals or the RFP process. **Failure to submit a proposal on time will not be waived by LIPA under any circumstances (e.g., traffic conditions, mail or courier failure, etc.).**

**B. Addenda: Errors and Omissions**

If a Proposer discovers any ambiguity, conflict, discrepancy, omission or other error in this RFP, it should immediately notify LIPA in writing, of such error and request clarification or modification to the document. Verbal notification will not be permitted.

Modifications to the RFP will be furnished by written notice to all parties who have been provided with a RFP.

If a Proposer fails to notify LIPA of a known error or an error that reasonably should have been known prior to the filing date for submission, Proposer shall assume the risk. If awarded the contract, Proposer shall not be entitled to additional compensation or time by reason of the error or its late correction.

***XVI. Contract Approval***

LIPA's selection of one or more successful Proposers shall require approval by the LIPA Board of Trustees. Any PPAs entered into in connection with this RFP shall not be valid, effective or binding until they have been approved by the Comptroller of the State of New York and filed in his office, in accordance with Section 112 of the New York State Finance Law. No payment shall be made under a PPA until such approval is obtained.

***XVII. Debriefing of Unsuccessful Respondents***

Upon written request, a debriefing will be scheduled with an unsuccessful Proposer after LIPA has provided notice of its selection of the successful Proposer.

Discussion will be limited to a critique of the requesting Proposer's proposal. Comparisons between proposals or evaluations of the other proposals will not be discussed. Debriefings may be conducted in person or on the telephone.