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IDAHO PUBLIC
UTILITIES COMMISSION

Attorneys for the Industrial Customers of Idaho Power

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE INDUSTRIAL)	CASE NO. IPC-E-21-19
CUSTOMERS OF IDAHO POWER'S PETITION)	
FOR AN ORDER TO SHOW CAUSE)	PETITION OF THE INDUSTRIAL
)	CUSTOMERS OF IDAHO POWER
)	COMPANY FOR AN ORDER TO SHOW
)	CAUSE REGARDING IDAHO POWER'S
)	COMPLIANCE WITH COMMISSION
)	ORDER NO. 32745

COMES NOW, the Industrial Customers of Idaho Power ("ICIP") and pursuant to Rule 33 of the Idaho Rules of Civil Procedure and respectfully Petitions this Commission issue its Order to Show Cause and for an Order Requiring Compliance with Commission Order No. 32745. This Petition is supported by the ensuing statement of the law and facts and exhibits hereto:

1. Respondent, Idaho Power Company ("Idaho Power" or the "Company") has issued a Notice of Intent ("NOI") also self-described as a Request for Proposals ("RFP") to solicit bids to meet the Company's:

[N]eed for additional capacity resources [that] has been identified as early as Summer 2023 at approximately 80MW, with peak deficits that grow to approximately 400 MW by Summer 2025.¹

Although specificity relating to timing and capacity is lacking, it is clear that Idaho Power has issued a Request for Proposals (“RFP”) seeking the addition of approximately 480 MW of new capacity over the two year period beginning in the “Summer of 2023.”

In February 2013, this Commission issued Order No. 32745 in which the Commission ordered that:

Idaho Power is directed to comply with RFP² guidelines applicable in its Oregon service area, should the Company commence an RFP process for a new supply-side resource prior to the development of Idaho-specific RFP guidelines.

The NOI/RFP published by Idaho Power and which is attached hereto as Exhibit 1, is evidence that Idaho Power has commenced “an RFP for a [and possibly several] new supply-side resource[s].” This Commission has never issued, nor even considered, the issuance of Idaho-specific RFP guidelines. Thus, the “guidelines applicable” in Idaho Power’s Oregon service area are applicable in Idaho Power Company’s Idaho service territory and to the current NOI/RFP just recently issued by Idaho Power.

The Oregon RFP guidelines³, which this Commission has ordered Idaho Power to comply, are clearly applicable to Idaho Power’s NOI/RFP. Oregon PUC Rule 860-089-0100 provides:

¹ NOI at p. 1, see Exhibit 1 hereto.

² Attachment A to the NOI is self-described as “Idaho Power Company’s (“ICP”) 2021 All-Source Requests for Proposals (“2021 AS RFP”). Parentheticals in original. The Oregon Rule defines RFP as “all documents ... used for soliciting proposals from prospective bidders.”

³ OPUC Rule 860-089-0100, et seq. attached as Exhibit 2.

(1) An electric company must comply with the rules in this division when it seeks to acquire generating or storage resources or to contract for energy or capacity if any of the following apply:

(a) The acquisition is of a resource or contract for more than an aggregate of 80 megawatts and five years in length;

(b) The acquisition is of a resource or contract in which the electric company does not specify the size or duration of the resource or contract sought but may result in an acquisition described in subsection 1(a) . . . of this rule;

Here Idaho Power has issued its RFP/NOI for a resource that, in the aggregate, is approximately 480 MW of capacity. The RFP/NOI is silent as to term of the contract[s], however the RFP/NOI, taken as a whole appears to seek long term commitments and is not seeking a short term or temporary fix to the Company's alleged capacity deficiencies. Presumably, Idaho Power will respond to this lack of detail when it files its responsive pleading hereto.

Furthermore, section (1)(b) of Oregon Rule 860-089-0100 is clearly applicable because Idaho Power has neither specified the size or the duration of the resource or contract sought, which acquisition "may" result in the acquisition of a resource described in Section (1)(a), e.g., in excess of 80 MW.

Idaho Power's RFP/NOI does not mention this Commission's order requiring it to comply with the RFP guidelines applicable to it in its Oregon service territory. Furthermore, to the best of the ICIP's knowledge, Idaho Power has not obtained, or attempted to obtain, a waiver of the applicability of the Oregon Rules from either this or the Oregon Commission. Idaho Power has provided no explanation for its failure to so comply.

The Oregon RFP guidelines provide specific and detailed processes that an electric utility issuing an RFP must follow. These processes include the retention of an independent evaluator, stakeholder participation in the drafting/design of the RFP and Commission approval or


disapproval of the draft RFP. In addition, the guidelines contain specific requirements on, among many other details, drafting evaluation methodologies for the scoring of bids. All of which are designed to “provide an opportunity to minimize long-term energy costs and risks” and to establish a “transparent competitive bidding process.”⁴ In order to achieve these goals, which this Commission has adopted by implication in its issuance of Order No. 32745, Idaho Power must be held to adherence to the Oregon RFP guidelines.

The ICIP therefore submits this Petition for an Order to Show Cause requiring Idaho Power to show cause why it should not be ordered to fully and promptly comply with the Oregon PUC’s RFP rules.

WHEREFORE, the ICIP respectfully requests:

That the Commission enter an Order to Show Cause directing Idaho Power to show cause why the Commission should not enter an order requiring it to comply with Idaho PUC Order No. 32475 and the Oregon RFP guidelines (Rule 860-089-0010, et. seq.)

Dated: June 14, 2021

By: 

Peter J. Richardson, RICHARDSON ADAMS, PLLC
Attorneys for the Industrial Customers of Idaho Power

⁴ OAR § 860-089-0100(1).

I HEREBY CERTIFY that on the 14th day of June, 2021, a true and correct copy of the within and foregoing Petition of the Industrial Customers of Idaho Power for an Order to Show Cause Case No. IPC-E-21-_____ (docket number yet to be designated by the Commission), by electronic copy only, to:

Donovan Walker, Senior Counsel
Idaho Power Company
dwalker@idahopower.com
dockets@idahopower.com

JanNorkyuki
Commission Secretary
Idaho Public Utilities Commission
Jan.noriyuki@puc.idaho.gov

Karl Klien, Director Legal Division
Deputy Attorney General
Idaho Public Utilities Commission
karl.klien@puc.idaho.gov

By: 
Peter J. Richardson

EXHIBIT I

Notice of Intent 2021 All-Source Request for Proposals

ICIP Application for an Order
To Show Cause
IPC-E-21-_____



Notice of Intent

2021 All-Source Request for Proposals

**Idaho Power Company
P.O. Box 70
Boise, ID 83707**

ResourceNOI@idahopower.com

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I. INTRODUCTION

A. Purpose

Idaho Power Company ("IPC") is releasing this Notice of Intent ("NOI") in anticipation of issuing multiple all-source requests for proposals in 2021 ("2021 AS RFPs").

B. Company Background

IDACORP, Inc. is a holding company formed in 1998. Comprised of regulated and non-regulated businesses, its origins lie with Idaho Power, a regulated electric utility that began operations in 1916.

Today, IPC is the largest regulated electric utility in the state of Idaho and IDACORP's chief subsidiary. IPC serves over 590,000 residential, business, agricultural, and industrial customers. The company's service area covers approximately 24,000 square miles, including portions of eastern Oregon. Learn more about Idaho Power at www.idahopower.com.

C. Current State

IPC currently serves its customers by supplying low-cost, reliable, and clean energy. Affordable, clean hydropower is the largest source of energy for customers. Power generation comes from a diverse set of resources that continues to meet a growing demand. For a more detailed description of current generation resources, please visit: <https://www.idahopower.com/energy-environment/energy/energy-sources/>.

D. Need for Action

IPC's service territory continues to experience customer growth and an increasing demand (load) for electricity. IPC anticipates sustained load growth that will require the procurement of new resources to meet peak summer demand and maintain system reliability. Additionally, recent changes in the regional transmission markets have constrained the transmission system external to the IPC service territory and significantly impacted the ability to import energy from western market hubs for delivery to IPC's system. The addition of new resources to meet peak demand is critical to ensure IPC can continue to reliably meet the growing demands on its electrical system and serve its customers. The need for additional capacity resources has been identified as early as Summer 2023 at approximately 80MW, with peak deficits that grow to approximately 400 MW by Summer 2025.

E. IPC's Proposed Action

IPC's proposed action includes the issuance of public 2021 All-Source Requests for Proposal that specifically solicit proposals for additional resources to satisfy IPC's resource needs and forecasted capacity deficits. IPC may accept multiple proposals representing a diversity of resource types and bid structures to best serve forecasted deficits. IPC remains fully committed to continuing to serve customers with reliable, affordable, clean energy.

Idaho Power is seeking the following resource types, including but not limited to:

- Renewable
- Renewable plus Battery Storage
- Low emission Non-Renewable, with renewable retrofit capabilities
- Standalone Battery Storage
- Pumped Storage Hydro
- Other Resources as applicable

II. SUPPLEMENTAL INFORMATION

A. Key Events and Dates

IPC intends to issue an RFP as early as June 30, 2021. Each request for proposal will include a more detailed schedule of key events and dates to meet the identified Need for Action.

B. Contact Information

Throughout the duration of the information gathering process, all questions, submissions, responses and other communications concerning this NOI shall be sent to IPC via email at ResourceNOI@idahopower.com.

C. Intent to Bid Requirements

Respondents shall return the following completed documents, in an electronic copy to IPC via an email to: ResourceNOI@idahopower.com no later than **5:00 PM MDT on June 11, 2021**, to be accepted as a respondent in the 2021 AS RFPs:

- Attachment A – Intent to Bid form

In the case where multiple facilities are being proposed, please provide one *Attachment A - Intent to Bid Form* for each facility separately.

Upon receipt of the above information, IPC will provide acknowledgement of receipt.

III. GENERAL INFORMATION

A. Revisions to this NOI

The information specified in this NOI reflects those presently known. IPC reserves the right to vary, in detail, the requirements and/or to make changes as necessary. IPC also reserves the right to cancel or to rescind this NOI or any further RFP processes, in whole or in part, prior to the execution of a contract, if any.

B. Cost to Respond

Respondent will absorb all costs incurred in responding to this NOI, including without limitation, costs related to the preparation and presentation of its response. All materials submitted by the Respondent immediately become the property of IPC. Any exception will require written agreement by both parties prior to the time of submission.

C. Respondent to Conform with Law

Respondent shall conform in all material respects to all applicable laws, ordinances, rules, and regulations and nothing in this NOI shall be construed to require IPC or Respondent to act in a manner contrary to law.

D. Business Conduct Policy

In responding to this NOI, Respondent shall adhere to best business and ethical practices.

Respondent shall adhere to IPC's Supplier Code of Conduct, available at www.idahopower.com.

E. Small Business and Small Disadvantaged Business Program

IPC is committed to the implementation of a Small and Disadvantaged Business Program. It is the intent of IPC that small business concerns and small businesses owned and controlled by socially and economically disadvantaged individuals have the opportunity to participate in the performance of contracts awarded by IPC. Consequently, we request that you indicate your eligibility as a small business based upon the regulations in Title 13, Code of Federal Regulations, Part 121. (If in doubt, consult the Small Business Administration Office in your area).

Eligibility as a small disadvantaged business is first based on eligibility as a small business, as noted above. Second, the business must be majority owned (51 percent or more) and controlled/managed by socially and economically disadvantaged person(s). The Small Business Administration designated the following groups as "presumed socially disadvantaged": Black Americans, Hispanic Americans, Native Americans, and Asian-Pacific Americans. Other individuals may be found socially disadvantaged and eligible for the program on a case-by-case basis. If you have any questions, please see 13 CFR 124.1-124.1016 or contact your local Small Business Administration office.

F. Purchasing Restrictions/Prohibited Technology

Pursuant to Section 889(a)(1)(B) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, [Supplier/Contractor] must be able to represent in its agreement with Idaho Power that [Supplier/Contractor] does not use or have installed any telecommunications equipment, system, or service (or as a substantial or essential component of any system or as or critical technology of any system) made by any of the following companies, or any subsidiary or affiliate thereof (including companies with the same principal word in the name, e.g., "Huawei" or "Hytera"): Huawei Technologies Company; ZTE Corporation; Hytera Communications Corporation; Hangzhou Hikvision Digital Technology Company; or, Dahua Technology Company (collectively, "Prohibited Technology"). Prohibited Technology may include, but is not limited to, video/monitoring surveillance equipment/services, public switching and transmission equipment, private switches, cables, local area networks, modems, mobile phones, wireless devices, landline telephones, laptops, desktop computers, answering machines, teleprinters, fax machines, and routers. Prohibited Technology does not include telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that the equipment transmits or handles.

G. Entire NOI

This NOI and all Exhibits, Attachments, and Addendums within are incorporated herein by this reference and represent the final expression of this NOI. Only information supplied by IPC in writing through the parties listed herein or by this reference made in the submittal of this NOI shall be used as the basis for the preparation of Respondent's submittals.

Attachment A – Intent to Bid Form



Attachment A – Intent to Bid Form

This form is to declare that the undersigned intends to respond to one or more of Idaho Power Company's ("IPC") 2021 All-Source Requests for Proposals ("2021 AS RFPs"). In the case where multiple facilities are being proposed, please provide one *Intent to Bid Form* for each facility separately.

COMPANY INFORMATION

Company Name:

(Legal entity of intended contract signatory)

Company Ownership:

(Direct or Indirect owners of Company, attach organizational chart showing percent ownership share, etc.)

Mailing Address:

Company Telephone Number:

Contact Name:

Job Title:

Contact Telephone Number:

E-mail:

COMPANY BUSINESS CLASSIFICATION

☐ Small Business

☐ Small Disadvantaged Business

☐ Woman Owned Business

☐ Large Business

☐ HUBZone Small Business

☐ Veteran Owned Business

☐ Service-Disabled Veteran Owned Business

☐ Other _____

PROPOSAL INFORMATION

Intended Proposal

Resource type?

Is the resource new or existing?

Storage type? (If included)

Can the intended proposal accommodate a Build Transfer or IPC Ownership agreement structure?

Size of each bid asset in MW capacity (nominal)

Location (County, State)

Location (GPS Coordinates)

What is the proposed point of interconnection into IPC's system, or if off-system, what is the proposed point of delivery?

Please provide IPC's interconnection queue number if applicable.

What is the estimated commercial operation date (month/year)?

Additional Comments:

Idaho Power Company Affiliate Attestation

By signing below, Respondent certifies that neither Respondent Company nor any affiliate of Respondent Company has an affiliate relationship (whether by ownership, joint venture, or other association) with Idaho Power Company, IDACORP, or any other IDACORP affiliate.

RESPONDENT

Authorized Signature

Printed Name of Signor

Title of Signor

Date

EXHIBIT II

Oregon Administrative Rule
Sections 860-089-0100, et. seq.

ICIP Application for an Order
To Show Cause
IPC-E-21- _____

Public Utility Commission

Chapter 860

Division 89

RESOURCE PROCUREMENT FOR ELECTRIC COMPANIES

860-089-0010

Applicability and Purpose of Division 089

(1) The rules contained in this Division apply to electric companies, and are intended to provide an opportunity to minimize long-term energy costs and risks, complement the integrated resource planning (IRP) process, and establish a fair, objective, and transparent competitive bidding process, without unduly restricting electric companies from acquiring new resources and negotiating mutually beneficial terms.

(2) Upon request or its own motion, the Commission may waive any of the Division 089 rules for good cause shown. A request for waiver must be made in writing to the Commission prior to or concurrent with the initiation of a resource acquisition.

(a) In addition to the filing requirements in OAR Chapter 860, Division 001, an electric company filing a request for waiver under this section must serve the request on all parties to the electric company's most recent general rate case, request for proposal (RPF) filing, and IRP docket.

(b) If a request for waiver is filed by an electric company after it acquires a resource, granting, if any, of the waiver request does not result in or equate to the Commission's acknowledgment of the resource acquisition.

Statutory/Other Authority: ORS Ch. 183, 756, 758, 2016 OL Ch. 28

Statutes/Other Implemented: ORS 756.040, 758.060, 2016 OL Ch. 28, Sect. 6

History:

PUC 4-2018, adopt filed 08/30/2018, effective 08/30/2018

860-089-0020

Definitions

For purposes of this Division, unless the context requires otherwise:

(1) "Benchmark resource" is a resource identified in an electric company's response to its own request for proposals.

(2) "Commission-acknowledged IRP" means an IRP for which the Commission has acknowledged the electric company's action item to procure the resource subject to the rules in this division.

(3) "Electric company" has the meaning given that term in ORS 757.600.

(4) "Independent evaluator" or "IE" refers to a person engaged by an electric company to oversee an RFP process under the rules in this division, and who also reports directly to the Commission during that process. The IE must be independent of the utility and bidders, and also be experienced and competent to perform all IE functions identified in these Division 089 rules.

(5) "Integrated resource plan" or "IRP" has the meaning given that term in OAR 860-027-0400.

(6) "IRP Update" means an update to an acknowledged IRP that is filed in accordance with OAR 860-027-0400(9).

(7) "Qualifying facility" refers to qualifying facilities under 16 USC § 796(17) and (18) (2012) and ORS 758.505(8).

(8) "Request for proposals" or "RFP" means all documents, whether attached or incorporated by reference, used for soliciting proposals from prospective bidders.

(9) "Resource acquisition" refers to a process for the purpose of acquiring energy, capacity, or storage resources that starts with an electric company's:

- (a) Circulation of a final or draft RFP to third parties; or
- (b) Communication of a final offer or receipt of a final offer in a two-party negotiation.

Statutory/Other Authority: ORS Ch. 183, 756, 758, 2016 OL Ch. 28

Statutes/Other Implemented: ORS 756.040, 758.060, 2016 Ch. 28, Sect. 6

History:

PUC 4-2018, adopt filed 08/30/2018, effective 08/30/2018

860-089-0100

Applicability of Competitive Bidding Requirements

(1) An electric company must comply with the rules in this division when it seeks to acquire generating or storage resources or to contract for energy or capacity if any of the following apply:

- (a) The acquisition is of a resource or a contract for more than an aggregate of 80 megawatts and five years in length;
- (b) The acquisition is of a resource or contract in which the electric company does not specify the size or duration of the resource or contract sought but may result in an acquisition described in subsection (1)(a) or (1)(c) of this rule;
- (c) The acquisition is of multiple resources more than five years in length that in aggregate provide the electric company with more than an aggregate of 80 megawatts, and these resources:
 - (A) Are located on the same parcel of land, even if such parcel contains intervening railroad or public rights of way, or on two or more such parcels of land that are adjacent; and
 - (B) The generation equipment of any one of these resources is within five miles of the generation equipment of any other of these resources and construction of these resources is performed under the same contract or within two years of each other; or
- (d) As directed by the Commission.

(2) An electric company may request that the Commission find that resources presumed to be subject to subsection (1)(c) of this rule should not be considered in the aggregate. The electric company may make this request before acquiring the resources. The electric company bears the burden of rebutting the presumption that the acquisition is subject to these rules by showing each resource is separate and distinct.

(3) An electric company is not required to comply with the competitive bidding requirements to acquire a resource otherwise subject to section (1) of this rule when:

- (a) There is an emergency; meaning a human-caused or natural catastrophe resulting from an unusual and unexpected event, including but not limited to earthquake, flood, war, or a catastrophic energy plant failure, that requires an electric company to take immediate action;
- (b) There is a time-limited opportunity to acquire a resource of unique value to the electric company's customers;
- (c) An alternative acquisition method was proposed by the electric company in the IRP and explicitly acknowledged by the Commission; or
- (d) Seeking to exclusively acquire transmission assets or rights.

(4) Within 30 days of seeking to acquire a resource under section (3) of this rule, the electric company must file a report with the Commission explaining the relevant circumstances. The report must be served on all the parties to the electric company's most recent rate case, RFP, and IRP dockets.

Statutory/Other Authority: ORS Ch. 183, 756, 758, 2016 OL Ch. 28

Statutes/Other Implemented: ORS 756.040, 758.060, 2016 OL Ch. 28, Sect. 6

History:

PUC 4-2018, adopt filed 08/30/2018, effective 08/30/2018

860-089-0200

Engaging an Independent Evaluator

(1) Prior to issuing an RFP, an electric company must engage the services of an IE to oversee the competitive bidding process. The electric company must notify all parties to the electric company's most recent general rate case, RFP, and IRP dockets of its need for an IE, and solicit input from these parties and interested persons regarding potential IE candidates.

(2) The electric company must file a request for Commission approval to engage an IE. The Commission Staff will review the request and recommend an IE to the Commission based in part on the consideration of:

- (a) Input received from the electric company and interested, non-bidding parties;
- (b) Review of the degree to which the IE is independent of the electric company and potential bidders;
- (c) The degree to which the cost of the services to be provided is reasonable;
- (d) The experience and competence of the IE; and
- (e) The public interest.

(3) The electric company is responsible for engaging the services of the IE and is responsible for all fees and expenses associated with engaging the IE's services. The electric company may request recovery of fees and expenses associated with engaging an IE in customer rates.

(4) The electric company's contract with the IE must require that the IE fulfills its duties under these rules and that the IE confers as necessary with the Commission and Commission Staff on the IE's duties.

Statutory/Other Authority: ORS Ch. 183, 756, 758, 2016 OL Ch. 28

Statutes/Other Implemented: ORS 756.040, 758.080, 2016 OL Ch. 28, Sect. 6

History:

PUC 4-2018, adopt filed 08/30/2018, effective 08/30/2018

860-089-0250

Design of Requests for Proposals

(1) For each resource acquisition, the electric company must prepare a draft request for proposals for review and approval with the Commission, and provide copies of the draft to all parties to the IE selection docket. Prior to filing the draft RFP with the Commission, the electric company must consult with the IE in preparing the RFP and must conduct bidder and stakeholder workshops.

(2) The draft RFP must reflect any RFP elements, scoring methodology, and associated modeling described in the Commission-acknowledged IRP. The electric company's draft RFP must reference and adhere to the specific section of the IRP in which RFP design and scoring is described.

(a) Unless the electric company intends to use an RFP whose design, scoring methodology, and associated modeling process were included as part of the Commission-acknowledged IRP, the electric company must, prior to preparing a draft RFP, develop and file for approval in the electric company's IE selection docket, a proposal for scoring and any associated modeling.

(b) In preparing its proposal, the electric company must consider resource diversity (e.g. with respect to technology, fuel type, resource size, and resource duration).

(3) At a minimum, the draft RFP must include:

- (a) Any minimum bidder requirements for credit and capability;
- (b) Standard form contracts to be used in acquisition of resources;
- (c) Bid evaluation and scoring criteria that are consistent with section (2) of this rule and with OAR 860-089-0400;
- (d) Language to allow bidders to negotiate mutually agreeable final contract terms that are different from the standard form contracts;
- (e) Description of how the electric company will share information about bid scores, including what information about the bid scores and bid ranking may be provided to bidders and when and how it will be provided;
- (f) Bid evaluation and scoring criteria for selection of the initial shortlist of bidders and for selection of the final shortlist of bidders consistent with the requirements of OAR 860-089-0400.
- (g) The alignment of the electric company's resource need addressed by the RFP with an identified need in an acknowledged IRP or subsequently identified need or change in circumstances with good cause shown; and
- (h) The impact of any applicable multi-state regulation on RFP development, including the requirements imposed by other states for the RFP process; and

(4) An electric company may set a minimum resource size in the draft RFP, but it must allow qualifying facilities that exceed the eligibility cap for standard avoided cost pricing to participate as bidders.

(5) The Commission may approve the RFP with any conditions it deems necessary, upon a finding that the electric company has complied with the provisions of these rules and that the draft RFP will result in a fair and competitive bidding process.

(6) The Commission will generally issue a decision approving or disapproving the draft RFP within 80 days after the draft RFP is filed. An electric company may request an alternative review period when it files the draft RFP for approval including a request for expedited review upon a showing of good cause. Any person may request an extension of the review period of up to 30 days upon a showing of good cause.

Statutory/Other Authority: ORS Ch. 183, 756, 758, 2016 OL Ch. 28

Statutes/Other Implemented: ORS 756.040, 758.060, 2016 OL Ch. 28, Sect. 6

History:

[PUC 4-2018, adopt filed 08/30/2018, effective 08/30/2018](#)

860-089-0300

Resource Ownership

(1) An electric company may submit or allow its affiliates to submit bids in response to the electric company's request for proposals.

(a) Electric company and affiliate bids must be treated in the same manner as other bids.

(b) Any individual who participates in the development of the RFP or the evaluation or scoring of bids on behalf of the electric company may not participate in the preparation of an electric company or affiliate bid and must be screened from that process.

(2) An electric company may propose a benchmark bid in response to its RFP to provide a potential cost-based alternative for customers. The electric company may make elements of the benchmark resource owned or secured by the electric company (e.g., site, transmission rights, or fuel arrangements) available for use in third-party bids.

(3) If benchmark bid elements secured by the electric company are not made available to all bidders, it must provide analysis explaining that decision when seeking RFP acknowledgement and recovery of the costs of the resource in rates.

(a) If electric company resources are offered and made available for use in third-party bids, then the RFP may provide for appropriate compensation of electric company resources by third-party bidders.

(b) Separate electric company affiliate bids are not subject to this section of this rule, and no information on any decision to offer the use of separate electric company affiliate-owned elements to third-parties is required to be supplied to the Commission.

(4) An electric company may consider ownership transfers within an RFP solicitation.

(5) The electric company issuing the RFP must allow independent power producers to submit bids with and without an option to renew, and may not require that bids include an option for transferring ownership of the resource.

Statutory/Other Authority: ORS Ch. 183, 756, 758, 2016 OL Ch. 28

Statutes/Other Implemented: ORS 756.040, 758.060, 2016 Ch. 28, Sect. 6

History:

[PUC 4-2018, adopt filed 08/30/2018, effective 08/30/2018](#)

860-089-0350

Benchmark Resource Score

(1) Prior to the opening of bidding on an approved RFP, the electric company must file with the Commission and submit to the IE, for review and comment, a detailed score for any benchmark resource with supporting cost information, any transmission arrangements, and all other information necessary to score the benchmark resource. The electric company must apply the same assumptions and bid scoring and evaluation criteria to the benchmark bid that are used to score other bids.

(2) If, during the course of the RFP process, the Commission or the IE determines that it is appropriate to update any bids, the electric company must also make the equivalent update to the score of the benchmark resource.

(3) Before the IE provides the electric company an opportunity to score other bids, the electric company must file with the Commission and submit via a method that protects confidentiality the following information:

(a) The final benchmark resource score developed in consultation with the IE, and

(b) Cost information and other related information shared under this rule.

Statutory/Other Authority: ORS Ch. 183, 756, 758, 2016 OL Ch. 28

Statutes/Other Implemented: ORS 756.040, 758.060, 2016 OL Ch. 28, Sect. 6

History:

PUC 4-2018, adopt filed 08/30/2018, effective 08/30/2018

860-089-0400

Bid Scoring and Evaluation by Electric Company

(1) To help ensure that the electric company engages in a transparent bid-scoring process using objective scoring criteria and metrics, the electric company must provide all proposed and final scoring criteria and metrics in the draft and final RFPs filed with the Commission.

(2) The electric company must base the scoring of bids and selection of an initial shortlist on price and, as appropriate, non-price factors. Non-price factors must be converted to price factors where practicable. Unless otherwise directed by the Commission, the electric company must use the following approach to develop price and non-price scores:

(a) Price scores must be based on the prices submitted by bidders and calculated using units that are appropriate for the product sought and technologies anticipated to be employed in responsive bids using real-levelized or annuity methods. The IE may authorize adjustments to price scores on review of information submitted by bidders.

(b) Non-price scores must, when practicable, primarily relate to resource characteristics identified in the electric company's most recent acknowledged IRP Action Plan or IRP Update and may be based on conformance to standard form contracts. Non-price scoring criteria must be objective and reasonably subject to self-scoring analysis by bidders.

(c) Non-price score criteria that seek to identify minimum thresholds for a successful bid and that may readily be converted into minimum bidder requirements must be converted into minimum bidder requirements.

(d) Scoring criteria may not be based on renewal or ownership options, except insofar as these options affect costs, revenues, benefits or prices. Any criteria based on renewal or ownership options must be explained in sufficient detail in the draft RFP to allow for public comment and Commission review of the justification for the proposed criteria.

(4) The electric company may select an initial shortlist of bids after it has scored the bids and identified the bids with top scores. Following selection of an initial shortlist of bids, the electric company may select a final shortlist of bids.

(5) Unless an alternative method is approved by the Commission under OAR 860-089-0250(2)(a), selection of the final shortlist of bids must be based on bid scores and the results of modeling the effect of candidate resources on overall system costs and risks using modeling methods that are consistent with those used in the Commission-acknowledged IRP.

(a) The electric company must use a qualified and independent third-party expert to review site-specific critical performance factors for wind and solar resources on the initial shortlist before modeling the effects of such resources.

(b) In addition, the electric company must conduct, and consider the results in selecting a final short list, a sensitivity analysis of its bid rankings that demonstrates the degree to which the rankings are sensitive to:

(A) Changes in non-price scores; and

(B) Changes in assumptions used to compare bids or portfolios of bids, such as assumptions used to extend shorter bids for comparison with longer bids, or assumptions used to compare smaller bids or portfolios with larger ones.

(6) The electric company must provide the IE and Commission with full access to its production cost and risk models and sensitivity analyses. When the IE and Commission concur that appropriate protections for protected information are in place, the electric company must provide access to such information to non-bidding interested parties that request the information in the final short list acknowledgment proceeding.

Statutory/Other Authority: ORS Ch. 183, 756, 758, 2016 OL Ch. 28

Statutes/Other Implemented: ORS 756.040, 758.060, 2016 OL Ch. 28, Sect. 6

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Independent Evaluator Duties

(1) The IE will oversee the competitive bidding process to ensure that it is conducted fairly, transparently, and properly.

(2) The IE must be available and responsive to the Commission throughout the process, and must provide the Commission with the IE's notes of all conversations and the full text of written communications between the IE and the electric company and any third-party that are related to the IE's execution of its duties.

(3) The IE must consult with the electric company on preparation of the draft RFP and submit its assessment of the final draft RFP to the Commission when the company files the final draft for approval.

(4) The IE must check whether the electric company's scoring of the bids and selection of the initial and final shortlists are reasonable.

(5) To determine if the electric company's selections for the initial and final shortlists are reasonable, when the RFP allows bidding by the issuing electric company or an affiliate of the company, or includes resource ownership options for the electric company, the IE must independently score the affiliate bids and bids with ownership characteristics or options, if any, and all or a sample of the remaining bids. When the IE does not score all bids, and a request for acknowledgment of a final shortlist is pending before the Commission, as provided in OAR 860-089-0500; a participant in the acknowledgment proceeding may request that the Commission direct the IE to score all remaining bids or a broader sample.

(6) The IE must also evaluate the unique risks and advantages associated with any company-owned resources (including but not limited to the electric company's benchmark), and may apply the same evaluation to third-party bids, including an evaluation of the following issues:

(a) Construction cost over-runs (considering contractual guarantees, cost and prudence of guarantees, remaining exposure to ratepayers for cost over-runs, and potential benefits of cost under-runs);

(b) Reasonableness of forced outage rates;

(c) Reasonableness of any proposal or absence of a proposal to offer electric company owned or benchmark resource elements (e.g., site, transmission rights or fuel arrangements) to third-party bidders as part of the draft and final RFP;

(d) End effect values;

(e) Environmental emissions costs;

(f) Reasonableness of operation and maintenance costs;

(g) Adequacy of capital additions costs;

(h) Reasonableness of performance assumptions for output, heat rate, and power curve; and

(i) Specificity of construction schedules or risk of construction delays.

(7) The IE must review the reasonableness of any score submitted by the electric company for a benchmark resource. Once the electric company and the IE have both scored and evaluated the competing bids and any benchmark resource, the IE and the electric company must file their scores with the Commission. The IE and electric company must compare results and attempt to reconcile and resolve any scoring differences. If the electric company and IE are unable to resolve scoring differences, the IE must explain the differences in its closing report to the Commission.

(8) The IE must review the electric company's sensitivity analysis of the bid rankings required under OAR 860-089-0400 and file a written assessment with the Commission prior to the electric company requesting acknowledgment of the final short list.

(9) The IE must file a closing report with the Commission after the electric company has selected its final shortlist. The IE's closing report must include an evaluation of the applicable competitive bidding processes in selecting the least-cost, least-risk acquisition of resources. The Commission may request that the IE include additional analysis in its closing report.

(10) Unless the Commission directs otherwise, the IE must participate in the final short list acknowledgment proceeding initiated by the electric company, and must continue to participate if, at the time of acknowledgment of the electric company's final shortlist, the Commission chooses to require IE involvement through final resource selection. In addition to making a decision on acknowledgment, the Commission, on its own motion or at the request of other parties, including bidders, may require expanded IE involvement. Upon such a request or its own motion, the Commission may require an IE to be involved in the competitive bidding process through final resource selection.

Statutory/Other Authority: ORS Ch. 183, 756, 758, 2016 OL Ch. 28

Statutes/Other Implemented: ORS 756.040, 758.060, 2016 OL Ch. 28, Sect. 6

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Final Short List Acknowledgement and Result Publication

(1) For the purposes of this section, "acknowledgment" is a finding by the Commission that an electric company's final shortlist of bid responses appears reasonable at the time of acknowledgment and was determined in a manner consistent with the rules in this division.

(2) An electric company must request that the Commission acknowledge the electric company's final shortlist of bids before it may begin negotiations. Acknowledgment of a shortlist has the same legal force and effect as a Commission-acknowledged IRP in any future cost recovery proceeding.

(3) A request for acknowledgement must include, at a minimum, the IE's closing report, the electric company's final shortlist of responsive bids, all sensitivity analyses performed, and a discussion of the consistency between the final shortlist and the electric company's last-acknowledged IRP Action Plan or acknowledged IRP Update.

(4) The Commission will generally issue a decision on the request for acknowledgment within 60 days of receipt of the electric company's filing.

(5) The electric company must make a publicly available filing in the RFP docket providing the average bid score and the average price of a resource on its final shortlist.

(6) Following execution of all contracts resulting from an RFP or cancellation of the RFP, the electric company must provide information, on request, to a bidder about the bidder's bid score.

Statutory/Other Authority: ORS Ch. 183, 756, 758, 2016 OL Ch. 28

Statutes/Other Implemented: ORS 756.040, 758.060, 2016 OL Ch. 28, Sect. 6

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Protected Information

The electric company may request a protective order be issued prior to making available protected information required to be shared under the rules in this Division. Protected information may include, but is not limited to, RFP-related and bidding information, such as a company's modeling, cost support for any benchmark resource and detailed bid scoring and evaluation results. Protected information may then be provided to the Commission, the IE, and non-bidding parties, as appropriate under the terms of the protective order. Information shared under the terms of a protective order issued under this rule may be used in RFP review and approval, final shortlist acknowledgement, and cost-recovery proceedings.

Statutory/Other Authority: ORS Ch. 183, 756, 758, 2016 OL Ch. 28

Statutes/Other Implemented: ORS 756.040, 758.060, 2016 OL Ch. 28, Sect. 6

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