



Jun 29, 2020

**Mr. Mark Johnson**  
**Executive Director and Secretary**  
**Washington Utilities and Transportation Commission**  
**621 Woodland Square Loop SE, Lacey, WA 98503**  
**P.O. Box 47250, Olympia, WA 98504-7250**

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**Re: Climate Solutions comments on Amending, Adopting, and Repealing WAC 480-107, Relating to Purchases Electricity, Docket UE-190837, Second Round.**

Dear Mr. Mark Johnson,

Climate Solutions thanks you for the opportunity to submit comments and recommendations on Amending, Adopting, and Repealing WAC 480-107, Relating to Purchases of Electricity, Docket UE-190837. Climate Solutions is a clean energy nonprofit organization working to accelerate clean energy solutions to the climate crisis. The Northwest has emerged as a hub of climate action, and Climate Solutions is at the center of the movement as a catalyst, advocate, and campaign hub.

A clean and efficient grid serves as the foundation to deeply decarbonizing Washington's economy and achieving science-based greenhouse gas limits. Strong resource solicitation requirements that encourage competition and promote a diverse portfolio of clean energy resources will facilitate achieving compliance with the Clean Energy Transformation Act at the lowest reasonable cost, protect customers and lead to a more fair and transparent process for acquiring resources. In response to questions posed by the Utilities and Transportation Commission ("Commission") on June 2, 2020, Climate Solutions offers the following responses and comments relating to the Purchases of Electricity under the Clean Energy Transformation Act, followed by specific redline suggestions on the draft rules.

Climate Solutions is broadly supportive of the current direction of the rule draft, and we appreciate a number of the edits and improvements included. In particular, the inclusion of requirements to proactively outreach and advertise to under-represented potential bidders, gather information on equity impacts in all RFP responses, improved inclusion of public health considerations, disclosure of bids containing this data, direction to consider net benefits beyond those explicitly identified in bidder selection and other related provisions are strong additions in this draft of the rule. In certain places, we would recommend additional explicit inclusion of these considerations beyond those already added by the Commission in this draft, which can be found at the end of this document. We also appreciate the stronger requirements around independent evaluators and competitive procurement that will protect customers and the public interest. We hope these components remain as the draft moves toward its final form.

Below we offer responses to questions posed by the Commission, followed by additional comments on other areas in the rule. We also include suggested redlines in an appendix to provide further specificity.

**Response to UTC Questions:**

*1. Does the draft rule contain adequate time for public involvement to assure that, in most circumstances, stakeholder concerns are resolved? If not, please recommend an alternative timeline for these filing requirements.*

While we appreciate the desire to compress the timeline between the determination of a resource need and action on procurement, we are concerned that thirty days is too short of a timespan. Our preference would be a somewhat longer comment period—at least 45 days—to allow proper evaluation and response to a proposed RFP. An additional way to address the needed opportunity for input would be to strengthen the consultation process with staff and stakeholders during the development of an RFP and before it is published under WAC 480-107-015(2). The current provision offers encouragement to utilities to engage in such outreach; improving this to required consultation that includes intended content and criteria would allow an RFP to be developed in the first place that is responsive to feedback a utility would otherwise receive during the comment period.

*2. The draft rule at WAC 480-107-015(4), Solicitation Process, includes the requirement that the utility “must accept bids for a variety of energy resources that may have the potential to fill the identified resource needs including, but not limited to...” What burden does this requirement impose? What are the benefits or drawbacks of the rule providing that the utility “may accept bids”?*

Climate Solutions supports the direction to consider a wide diversity of sources and believe that doing so will inform both a given RFP and future planning exercises as the utility considers resource options to address a variety of system and legal needs. We recommend somewhat expanding this section to include distributed energy resources broadly, rather than just demand response and conservation, and resources owned by customers. The second inclusion is worth explicitly including because it is not standard practice in utility procurement and would promote the broader equity goals identified by CETA and addressed in numerous places in the rule draft.

*3. The “Contents of a solicitation” section of draft rule WAC 480-107-025(5) requires a sample evaluation rubric or, in the alternative, an explanation of the evaluation criterion. This requirement is intended to better enable bidders to design projects and bids that satisfy the resource needs as identified in the RFP. Does the draft language improve the transparency of the evaluation process? If not, please recommend an alternative approach or alternative components of the evaluation criterion that will provide the necessary transparency.*

We agree that maximizing clarity within an RFP solicitation is of critical importance, especially as these rules contemplate consideration of new criteria that have not been previously included in procurement processes. For this reason, we encourage the Commission to require *both* a rubric and explanation, allowing bidders to better incorporate and respond to needs identified by statute and the utility. RFP rubrics and explanations should reflect the project ranking procedure developed under WAC 480-107-035.

*4. Comments received from stakeholders in this docket on March 13, 2020, presented a variety of options for determining when a utility should be required to use an independent evaluator. Several commenters recommend including a capacity threshold ranging from 20 MW to 100 MW.*

Climate Solutions is disappointed to see the threshold move from 50 MW in the previous rule to 80 MW in the current proposal, and we recommend the threshold be returned to the previous level. While we share the desire to allow construction of smaller resources with a minimum of undue process, we do fundamentally believe that resource procurement should index for transparency and consultation with stakeholders and outside experts, as well as rigorous cost and project design protections.

*5. The draft rule requires that the repowering of the utility-owned resource be evaluated with the other responsive bids to the RFP. What are the benefits and drawbacks of this requirement?*

Climate Solutions strongly supports the requirement for an independent evaluator for repowering and other similar expenditures in which a utility has a vested interest. Because a decision to repower could displace the need for a resource build or procurement that would normally go through an RFP process, we strongly recommend that the rules and process outlined here cover these investments as well. Both new resource procurement and repowering impact customers in a financially similar way and could include many of the same health, environmental, economic, and equity considerations. Ensuring that repowering is subject to an independent evaluator just as new resource procurement would provides transparency, independent and fair review, and increases bidder confidence.

*6. Under certain circumstances, the draft rules at WAC 480-107-AAA require utilities to use independent evaluators, approved by the Commission, to assist in the evaluation and ranking of bids. What qualifications demonstrate that independent evaluators have the training or experience to appropriately weigh and consider CETA's equity provisions in their ranking of project bids?*

Independent evaluators should demonstrate their past history in evaluating, steering, and participating in similar resource solicitations, including for similarly situated utilities, similarly identified resource needs and other considerations. Candidate firms should demonstrate



competence and familiarity with Washington law and regulation and a demonstrated track record of properly evaluating the public interest, including ability to consider public health, environmental impacts, cost and risk considerations and other criteria identified in CETA and past Commission proceedings, orders, and findings. We support looking to other states, such as Oregon, to align with their selection process.

In addition, we recommend requiring that candidates for independent evaluator provide an explanation of their history engaging with and considering criteria intended to advance equity. Independent evaluators with explicit experience and competence in this space should be preferred, and the rules should identify this preference. Because these requirements are novel to Washington's process, experience in this area may be lacking in early years, and so extra rigor in selecting an evaluator competent and prepared to incorporate these criteria is necessary.

*7. Please provide citations to existing federal, state, or local laws applicable to the requirements of utility RFPs related to minority-, women-, disabled- or veteran-owned businesses and how these affect the language in the draft rule.*

CETA includes direction to the Department of Labor and Industries to identify a range of criteria for achieving high-labor standards, including contracting with firms owned by under-represented groups. Because the statutes under RCW 82.08.962 and RCW 82.12.962 and the emergency rule and its eventual permanent successor in WAC 296-140 are explicitly targeted to development of renewable generation resources, we recommend including these provisions by reference in this rulemaking. Definitions and thresholds for procurement from such firms are found in WAC 296-140-002.

In addition, the revised code of Washington includes provisions for RFPs soliciting from certain businesses, including those identified in the Commission's question. Chapter 39.10 RCW, Alternative Public Works Contracting Procedures, includes requirements for such solicitations and contract awards in sections 330, 430, and elsewhere. We recommend incorporating these requirements in combination with the standards established by Labor & Industries into the final purchase of electricity rules adopted by the Commission. We provide suggested amendments in the redlines available in Appendix A.

**Additional comments:**

***Title of docket:*** We agree with comments made at the February 25th workshop that "Purchase of Electricity" does not adequately reflect the broad set of resource options that utilities will consider in the procurement process. The Clean Energy Transformation Act emphasizes the importance of a diversity of resources, including energy efficiency and conservation, demand response, storage, and other distributed energy resources that go beyond the generation of electricity and provide unique



benefits to the electric system and to customers. We recommend updating the title of the docket to “Resource Procurement” to better reflect the broader resource procurement process.

**“Distributed energy resource:”** We recommend including a definition of “distributed energy resources,” and clarify that the utility must accept solicitations from this broader set of demand-side resources. We additionally recommend requiring that solicitations from customer-owned resources be accepted, and generally recommend including more explicit inclusion of distributed-energy resources as eligible bids for RFPs issued by utilities. Please see Climate Solutions’ recommended changes below in Appendix A.

**“Lowest reasonable cost:”** As stated in our comments on the Integrated Resource Plan draft rules, the Commission should update the definition of “lowest reasonable cost” to include the broader set of public benefits identified in the statute, including short- and long-term public health, economic, environmental, resiliency and energy security benefits. The statute clarified in numerous parts of the legislation, including legislative intent that these benefits are broadly in the public interest, and therefore should be included when making resource decisions moving forward.

**Order of CEIP/RFP:** The current rule proposal envisions RFPs flowing from resource needs identified in integrated resource plans. In order to ensure proper approval procedures are followed before the issuance of an RFP, Climate Solutions recommends that the Commission require the RFP be tied to an approved CEIP. The statute states that the CEIP be informed by the Clean Energy Action Plan, which is a component of the IRP. While the IRP takes a broader look at planning for resource needs over a 20-year time horizon, the CEIP will identify specific resource procurement needs necessary to meet the utility’s load and comply with the specific and interim targets as adopted by the utility over a four-year time horizon. The four-year CEIP will identify specific targets and interim targets before going through a formal approval process, which should be required prior to issuing an RFP. This order of operations will help avoid a situation in which a utility begins an RFP process on an implementation plan that has not been formally approved, and then must redraft the RFP in the event that the CEIP must be amended to receive approval by the Commission. While we recognize that the current sequence may in some scenarios result in faster procurement than the order we recommend, we believe that in the long term it will be more efficient to hold RFPs until implementation plans have been completed and received final approval.

**Consideration of environmental effects of carbon emissions:** The current draft of the rules for project ranking procedure (WAC 480-107-035) remove the explicit direction to consider the environmental effects of greenhouse gas emissions that was included in the previous draft of these rules. We are troubled by this removal and ask that it be restored. The Clean Energy Transformation Act repeatedly centers the need to eliminate greenhouse gas emissions—from the intent section, to the clean energy provisions, to the explicit requirement to price the social cost of greenhouse gas emissions—and removing this clause runs counter to both the spirit and text of the law.



Thank you again for the opportunity to provide comments and recommendations on the Amending, Adopting, and Repealing WAC 480-107, Relating to Purchases of Electricity. Please see Appendix A below for recommended changes to the draft rules. We look forward to continuing to engage with you as this process moves forward.

Sincerely,

A handwritten signature in black ink, appearing to read "Vlad Gutman-Britten".

Vlad Gutman-Britten  
*Washington Director*  
*Climate Solutions*

A handwritten signature in black ink, appearing to read "Kelly Hall".

Kelly Hall  
*Senior Policy Manager*  
*Climate Solutions*

***Appendix A: Suggested redline edits on draft Purchase of  
Electricity rules***

**Chapter 480-107 WAC**

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**WAC 480-107-007 Definitions.**

"**Affiliate**" means a person or corporation that meets the definition of an "affiliated interest" in RCW 80.16.010.

"**Bid**" means a project proposal.

"**Bidder**" means a project developer.

"**Commission**" means the Washington utilities and transportation commission.

"**Conservation and efficiency resources**" has the same meaning as defined by WAC 480-100-600 (Definitions) [Draft integrated resource planning chapter].

"**Distributed energy resource**" means a nonemitting electric generation or renewable resource or program that reduces electric demand, manages the level or timing of electricity consumption, or provides storage, electric energy, capacity, or ancillary services to an electric utility and that is located on the distribution system, any subsystem of the distribution system, or behind the customer meter, including conservation and energy efficiency.

"**Independent evaluator**" means a third party, not affiliated with the utility, that provides an assessment of the utility's request for proposal process, evaluation, selection criteria, and related analyses of all project bids and project proposals received in response to a request for proposal.

"**Independent power producer**" means an entity other than a utility, utility subsidiary, or utility affiliate entity that develops or owns generating facilities or portions thereof that are not qualifying facilities as defined in WAC 480-106-007 (Definitions).



**"Integrated resource plan"** or **"IRP"** means the filing made by a utility in accordance with WAC 480-100-600 (Definitions) [Draft integrated resource planning chapter].

**"Project developer"** means an individual, association, corporation, or other legal entity that can enter into a contract with the utility to supply a resource need.

**"Project proposal"** means a project developer's document containing a description of a project and other information in response to the requirements set forth in a request for proposals.

**"Qualifying facilities"** has the same meaning as defined by WAC 480-106-007 (Definitions).

**"Request for proposals"** or **"RFP"** means the documents describing a utility's solicitation of bids for delivering a resource need.

**"Resource need"** has the same meaning as defined by WAC 480-100-600 (Definitions) [Draft integrated resource planning chapter].

**"Resource supplier"** means a third-party supplier, utility, or utility affiliate that provides equipment or services that serve a resource need.

**"Subsidiary"** means any company in which the utility owns directly or indirectly five percent or more of the voting securities, and that may enter a power or conservation contract with that electric utility. A company is not a subsidiary if the utility can demonstrate that it does not control that company.

**"Utility"** means an electrical company as defined by RCW 80.04.010.

#### **WAC 480-107-015 The solicitation process.**

(1) The utility must solicit bids for its resource needs whenever its most recently filed and approved Clean Energy Implementation Plan or biennial integrated resource plan check-in demonstrates that the utility has a resource need within four years.

(2) Utilities are must consult with commission staff and other interested persons during the development of the RFP and the associated evaluation rubric. Staff and stakeholders must be provided with a draft





evaluation rubric and other associated materials and criteria for comment from stakeholders and consider feedback provided before finalizing the RFP.

(3) A utility must conduct outreach to potential bidders, including nonprofits and under-represented bidders such as minority-, women-, disabled and veteran-owned businesses, especially those identified by the office of minority and women's business enterprises's certified business list, to encourage equitable participation in the bidding process. Potential bidders must have equitable access to information relevant to responding to a utility's RFP, including but not limited to accommodation required by the Americans with Disabilities Act communications guidance.

(4) A utility must submit to the commission a proposed RFP and accompanying documentation no later than forty-five days after receiving approval for the utility's Clean Energy Implementation Plan or biennial integrated resource plan check-in is due to be filed with the commission. The filing must include the timeline that the utility intends to solicit bids. Within forty-five days from the RFP's filing date, interested persons may submit written comments to the commission on the RFP. The commission will approve, approve with conditions, or suspend the RFP within thirty days after the close of the comment period.

(5) A utility must solicit bids for resource needs within thirty days of a commission order approving the RFP, with or without conditions, as applicable.

(a) To solicit bids, a utility must post a copy of the RFP on the utility's public web site and make reasonable efforts to ensure the RFP is known to industry and potential bidders, such as placing notices in relevant industry publications, including publications aimed at women-, minority-, disabled, and veteran-owned businesses.

(b) On a public webpage, the utility must publish information about how interested persons can participate in the RFP, or follow the utility's RFP work and the approval process for its RFP at the



commission. The utility must also provide information detailing the approval process, including that for submitting a draft RFP to the commission and providing public comment. The utility must publish on the same webpage information for interested persons on how to contact the commission's Records Center to be placed on relevant distribution lists for utility RFPs.

(6) The utility must ensure that all bids remain sealed until the expiration of the solicitation period specified in the RFP.

(7) The utility must accept bids for a variety of energy resources that may have the potential to fill the identified resource needs including, but not limited to: electrical savings associated with conservation and efficiency resources; demand response or other distributed energy resources; energy storage; electricity from qualifying facilities; electricity from independent power producers; and, ~~at the utility's election,~~ electricity from utility subsidiaries, ~~and~~ other electric utilities, and customer-owned resources, whether or not such electricity includes ownership of property.

(8) A utility may participate in the bidding process as a resource supplier, or may allow a subsidiary or affiliate to participate in the bidding process as a resource supplier, pursuant to requirements described in WAC 480-107-135 (Conditions for purchase of resources from a utility, a utility's subsidiary, or affiliate), and WAC 480-107-AAA (Independent evaluator for large resource need or utility or affiliate bid). The utility's RFP must disclose which type of bids under WAC 480-107-135(1) the RFP will accept.

(9) A utility may issue RFPs more frequently than required by this rule. Should a utility choose to issue additional RFPs, it must follow all requirements included in these rules as applicable.

#### **WAC 480-107-025 Contents of the solicitation.**

(1) The RFP must identify the resource need, including specific attributes or characteristics the utility is soliciting, such as the amount and duration of power, time and locational attributes, operational



attributes, the type of technology or fuel source necessary to meet a compliance requirement, and any additional information necessary for potential bidders to make a complete bid including a copy or link to the complete assessment of avoided costs identified in WAC 480-100-610(13) (Content of an Integrated Resource Plan) [Draft].

(2) The RFP must request information identifying energy and non-energy benefits or burdens to highly impacted communities and vulnerable populations, short-term and long-term public health impacts, environmental impacts, resiliency and energy security impacts, the bidder's past performance in utilization of the office of minority and women's business enterprises certified businesses to the extent permitted by law, the bidder's past performance in utilizing veteran-, and disabled-owned businesses, a bidder's intent to follow the labor standards established in WAC 296-140-002 as those rules existed on the date of adoption of this section or any successor rule adopted by the department of labor and industries, or other information that may be relevant to identifying the costs and benefits of each bid. After the approval of the utility's first Clean Energy Implementation Plan requested information must include, at a minimum, information related to indicators approved in the utility's most recent Clean Energy Implementation Plan.

(3) The RFP must document that the size and operational attributes of the resource need requested are consistent with the range of estimated new resource needs identified in the utility's approved Clean Energy Implementation Plan or biennial integrated resource plan check-in.

(4) The RFP must allow bids for any resource that meets a portion of the amount or a subset of the characteristics or attributes of the resource need, including but not limited to unbundled renewable energy credits, conservation and efficiency resources, demand response or other distributed energy resources, regardless of ownership structure, or other resources identified to contribute to an equitable distribution of energy and nonenergy benefits to vulnerable populations and highly impacted communities.



(5) The RFP must explain the specific ranking procedures and assumptions that the utility will use in accordance with WAC 480-107-035 (Project ranking procedure). The RFP must include a sample evaluation rubric that ~~either~~ quantifies the weight each criterion will be given during the project ranking procedure and provide a detailed explanation of the aspects of each criterion specifically identified that would result in the bid receiving higher priority. The RFP must also specify any minimum criteria and qualifications that bidders must satisfy to be eligible for consideration in the ranking procedure.

(6) The RFP must state which type of bids in WAC 480-107-135(1) the RFP will accept.

(7) The RFP must specify a detailed timeline for each stage of the RFP process including those for solicitation, ranking , and selection as well as the utility's schedule of planned informational activities and contact information for potential bidders.

(8) The RFP must identify all financial security requirements and the rationale for such requirements.

(9) The RFP must generally identify any utility-owned assets, including merchant side assets, that will be made available by the utility to be used by bidders to assist in meeting the resource need at the lowest reasonable cost. The utility must make reasonable efforts to provide necessary technical details as requested from bidders and allow the use of such assets to be included in bids.

**WAC 480-107-AAA Independent evaluator for large resource need or utility or affiliate bid.**

(1) When required to solicit bids under WAC 480-107-015(1), a utility must engage the services of an independent evaluator to assess and report on the solicitation process if:

(a) The resource need is greater than 50 megawatts; or

(b) If any one of the circumstances in WAC 480-107-135(1) is present.

(2) The utility, after consulting with commission staff and interested persons, may issue an RFP for an independent evaluator and must recommend an independent evaluator for approval by the commission. The Commission will approve the selection of an independent evaluator based in part on the consideration of:

(a) Input received from the electric utility and interested, non-bidding parties;

(b) Review of the degree to which a proposed independent evaluator is independent of the electric utility 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 independent evaluator with similar RFPs, resource needs, and utility requirements, including with regards to their ability to evaluate criteria connected to impacts on environment, public health, and vulnerable populations; and

(e) The public interest.

(3) The independent evaluator will contract with and be paid by the utility. The utility will also manage the contract terms with the independent evaluator.

(4) The utility must provide the independent evaluator with all data and information necessary to perform a thorough examination of the projects and the bidding process.

(5) The independent evaluator will, at a minimum:

(a) Ensure that the RFP process is conducted fairly and properly;

(b) Participate in the design of the solicitation;

(c) Evaluate the unique risks, burdens, and benefits of each bid, including as these impact public health, environmental conditions, vulnerable populations, and economic considerations for customers;

(d) Provide to the Company the independent evaluator's minutes of meetings and the full text of written communications between the independent evaluator and the utility and any third-party related to the independent evaluator's execution of its duties;



(e) Verify that the utility's inputs and assumptions including capacity factors and capital costs are reasonable;

(f) Assess whether the utility's process of scoring the bids and selection of the initial and final shortlists is reasonable;

(h) Prepare a final report to the commission after reconciling rankings with the utility in accordance with WAC 480-107-035(4) that must:

(i) Include an evaluation of the competitive bidding process in selecting the lowest reasonable cost acquisition or action to satisfy the identified resource need, including the adequacy of communication with interested persons and bidders; and

(iii) Explain ranking differences and why the independent evaluator and the utility were, or were not, able to reconcile the differences.

(6) The commission may request that additional analysis be included in the final report.

(7) Interested persons may file comments on the final report filed with the commission, including concerns about routine processes, such as administrative corrections or recommending removal of bids that do not comply with the minimum criteria identified in the RFP, but no stakeholder, including the utility or commission staff, shall have any editorial control over the independent evaluator's final report.

**WAC 480-107-035 Project ranking procedure.**

(1) A utility must receive approval from the Commission for the procedures and criteria the utility will use in its RFP to evaluate and rank project proposals.

(2) At a minimum, the ranking criteria must recognize resource cost, market-volatility risks, demand-side resource uncertainties, resource dispatchability, resource effect on system operation, credit and financial risks to the utility, the risks imposed on ratepayers, public policies regarding resource preference and requirements adopted by Washington state or the federal government, including environmental

effects including those associated with resources that emit greenhouse gases. The ranking criteria must recognize differences in relative amounts of risk and benefit inherent among different technologies, fuel sources, financing arrangements, and contract provisions, including risks and benefits to vulnerable populations and highly impacted communities, and a bidder's intent to follow the labor standards established in WAC 296-140-002 as those rules existed on the date of adoption of this section or any successor rule adopted by the department of labor and industries. The ranking criteria must also be consistent with the avoided cost methodology developed in the integrated resource plan the utility uses to support its determination of its resource need. The utility must consider the value of any additional net benefits that are not directly related to the specific need requested.

(3) The utility must evaluate project bids that meet only a portion of the resource need in conjunction with other proposals in developing the lowest reasonable cost portfolio. The utility must not discriminate based on ownership structure.

(4) The utility, and if required under WAC 480-107-AAA, the independent evaluator, will score and produce a ranking of the qualifying bids following the RFP ranking criteria and methodology. If, as a result of unexpected content in the bids, the utility deems it necessary to modify the ranking criteria, the utility must notify all bidders and other interested persons of the change, describe the change and provide an opportunity for bidders to subsequently modify submitted bids.

(5) Within five days after the sealed project proposals have been opened for ranking, the utility must make available for public inspection on the utility's website a summary of each project proposal. Where confidential data constraints prohibit the utility from identifying specifics of a project, a generic but complete description is sufficient.

(6) The utility may reject any project proposals that do not comply with the minimum requirements within the RFP or, as part of the bid, do not identify the costs of complying with environmental, public health, or other laws, rules, and regulations in effect at the time of the bid.

(7) Within twenty days after executing an agreement for acquisition of a resource the utility must file the executed agreement and related documents with the commission.

(8) The commission may review any acquisitions resulting from the RFP process in the utility's relevant general rate case or other cost recovery proceeding.

(9) The commission will review, as appropriate, a utility's finding that no proposal adequately serves ratepayers' interests together with evidence filed in support of any acquisition in the utility's relevant general rate case or other cost recovery proceeding.

...

**WAC 480-107-060 Acquisition of distributed energy resources.**

A distributed energy resource bidder may participate in the bidding process. If distributed energy resources may meet some or all of the identified resource need, the utility must make a good faith effort to provide sufficiently detailed information that allows a bidder the opportunity to respond with a bid, including stacked values of benefits and costs.

**WAC 480-107-065 Acquisition of conservation and efficiency resources.**

(1) A conservation and efficiency resource supplier may participate in the bidding process for any resource need. A utility, a utility subsidiary, or affiliate may participate as a conservation supplier subject to the conditions described in WAC 480-107-135 (Conditions for purchase of resources from a utility, a utility's subsidiary, or affiliate ).

(2) All conservation and efficiency measures included in a project proposal must produce savings that can be reliably measured or estimated with accepted engineering, statistical, or meter-based methods.

(3) A utility must acquire all conservation and efficiency resources through a competitive procurement process as described in this





rule unless implementing a competitive procurement framework for conservation and efficiency resources as approved by the commission.

(a) As part of that process, a utility may develop, and update each biennium, a competitive procurement framework for conservation and efficiency resources in consultation with its conservation advisory group, as described in WAC 480-109-110 (Conservation advisory group). The first competitive procurement framework for conservation and efficiency resources may be filed with the 2022-2024 biennial conservation plan.

(b) The competitive procurement framework for conservation and efficiency resources must:

(i) Define the specific criteria that will be used to determine the frequency of competitively bidding conservation and efficiency resource programs or parts of a program;

(ii) Address appropriate public participation and communication of evaluation and selection criteria;

(iii) Enhance or, at minimum, not interfere with the adaptive management of programs;

(iv) Include documentation of support by the advisory group; and

(v) Be filed as an appendix to each biennial conservation plan, as described in WAC 480-109-120 (Conservation planning and reporting).

(c) The competitive procurement framework for conservation and efficiency resources may:

(i) Exempt particular programs from competitive procurement, such as low-income, market transformation, or self-directed programs; and

(ii) Consider if and when to use an independent evaluator.

**WAC 480-107-075 Contract finalization.**

(1) Unless otherwise prohibited by law, a utility may decide whether to enter into a final contract with any project bidder that meets the selection criteria of the RFP. Any bidder may petition the commission to review a utility's decision not to enter into a final contract.



(2) Any project bidder and utility may negotiate changes to the selected project proposal, subject to any limitation established in the RFP, for the purpose of finalizing a particular contract consistent with the provisions of this chapter.

(3) The utility may sign contracts for any appropriate period specified in a selected project proposal for up to twenty years. The utility may sign longer-term contracts if such provisions are specified in the utility's RFP.

(4) Any contract must require the firm awarded the contract to track and report to the Commission its utilization of the office of minority and women's business enterprises certified businesses and veteran certified businesses.

(5) If material changes are made to the project proposal after project ranking, including material price changes, the utility must suspend contract finalization with that bidder and rerank, and have the independent evaluator rerank when applicable, projects according to the revised project proposal. If the material changes cause the revised project proposal to rank lower than projects not originally selected, the utility must instead pursue contract finalization with the next ranked project.