

The NW Energy Coalition offers the following redline suggestions on the draft rules. Due to the multiple colors and edits contained in the original version of these draft rules, we use yellow highlight for sections where we have made edits or comments to help the reader identify our comments.

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## Chapter 480-107 WAC

### WAC 480-107-001 Purpose and scope.

(1) The rules in this chapter require utilities to solicit bids, rank project proposals, and identify any bidders that meet the minimum selection criteria. The rules in this chapter do not establish the sole procedures utilities may use to acquire new resources. Utilities may construct electric resources, operate conservation and efficiency resource and demand response programs, purchase power through negotiated contracts, or take other action to satisfy their public service obligations.

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(2) The commission will consider the information obtained through these bidding procedures when it evaluates the performance of the utility in rate and other proceedings.

### WAC 480-107-002 Application of rules.

(1) The rules in this chapter apply to any utility that is subject to the commission's jurisdiction under RCW 80.04.010, RCW 80.01.040 and chapter 80.28 RCW.

(2) Any affected person may ask the commission to review the interpretation or application of these rules by a utility or customer by making an informal complaint under WAC 480-07-910 (Informal complaints), or by filing a formal complaint under WAC 480-07-370 (Pleading—General).

(3) Consistent with WAC 480-07-110 (Exemptions from and modifications to commission rules; conflicts with other rules), the commission may grant an exemption from the provisions of any rule in this chapter.

**WAC 480-107-004 Additional requirements.**

(1) These rules do not relieve any utility from any of its duties and obligations under the laws of the state of Washington.

(2) The commission retains its authority to impose additional or different requirements on any utility in appropriate circumstances, consistent with the requirements of law.

**WAC 480-107-006 Severability.**

If any provision of this chapter or its application to any person or circumstance is held invalid, the remainder of the chapter or the application of the provision to other persons or circumstances is not affected.

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

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is permitted without prior written authorization by

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commission. Such exceptions may be granted only if

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purposes underlying regulation, and applicable statutes. Any deviation

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"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].

"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).

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**Comment [1]:** The term avoided cost, though not defined, has been dropped from this version. We should think about if we want methodology and transparency requirements

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**Deleted:** "Avoided costs" means the incremental costs to a utility of electric energy, electric capacity, or both, that the utility would generate itself or purchase from another source, but for purchases to be made under these rules. A ... [1]

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**Deleted:** "Conservation" means any reduction in electric power ... [4]

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"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].

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"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.

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"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.

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

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

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

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

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"Subsidiary" means any company in which the utility owns directly or indirectly five percent or more of the voting securities, and that

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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 integrated resource plan or Clean Energy Implementation plan demonstrates that the utility has a resource need within four years.

(2) Utilities are required encouraged to consult with commission staff and other interested persons during the development of the RFP and the associated evaluation rubric.

(3) A utility must conduct outreach to potential bidders, including nonprofits and under-represented bidders such as minority-, women-, disabled and veteran-owned businesses, 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.

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Comment [2]: What if the CEAP within the IRP shows a need in the next 4- 10 years to get to the standards?

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(4) A utility must submit to the commission a proposed RFP and accompanying documentation no later than forty-five days after the utility's integrated resource plan is due to be filed with the commission. The filing must include the timeline that the utility intends to solicit bids. Within thirty 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

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(d) All bids will remain sealed until expiration of the solicitation period specified

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**Comment [3]:** If the utility is required to consult with staff and stakeholders, as suggested above, during the development phase of the RFP, this 30 day period should be sufficient. However, if not a requirement, this timeline should be extended to a minimum of 45 days.

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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; 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, 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

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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.

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

(1) The RFP must identify the resource need, including specific attributes or characteristicsthe 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, 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

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**Comment [4]:** If the utility is accepting bids from resources that can meet need, why would they specify the technology or fuel source here?

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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 integrated resource plan.

(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, 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 or provides 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

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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.

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**Comment [5]:** This term is used in several places, maybe it should be defined, because it seems to mean to distinguish between third parties and subsidiaries?

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**Comment [6]:** This seems better than current practice, when the utility can make ch... [10]

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(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 ~~5000~~ 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.

(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;

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(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.

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**Comment [7]:** Somewhere in this process, we have lost the step for the independent evaluator to submit a draft or preliminary review of the process and the bids to the UTC PRIOR to negotiating with the utility to come up with the final list. Recommend restoring previous rule language to restore this element.

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(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) The commission must approve 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, **environmental requirements and other requirements** adopted by Washington state or the federal government. 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. The ranking criteria must

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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 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

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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 480-107-045 Pricing and contracting procedures.**

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Comment [8]: Former version was more specific and we recommend reverting back to that language. "a final detailed ranking, including specific performance on each criteria area identified in subsection(2) of this section, of results for all proposals."

(1) Once project proposals are ranked in accordance with WAC 480-107-035 (Project ranking procedure), the utility must identify the bidders that best meet the selection criteria and that are expected to produce the relevant attributes as defined by that portion of the resource need to which the project proposal is directed.

(2) The project proposal's price, pricing structure, and terms are subject to negotiation.

**WAC 480-107-060 Acquisition of demand response.**

A demand response bidder may participate in the bidding process.

If demand response 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 ).

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- Joni Bosh 6/29/2020 2:17 PM  
Comment [9]: This leaves it up to the utility to decide if DR gets to bid or not. I would leave that up to the bidders. The utility should be required just to describe in adequate detail the need they are trying to meet.
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(2-a) 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.

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(3) A utility must acquire 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 the competitive 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 2022-20243 biennial conservation plan.

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

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(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;

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(ii) ~~Address~~ Provide a detailed description for appropriate public participation in the solicitation and selection process 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

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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) 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 re-rank, and have the independent evaluator re-rank 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.

**WAC 480-107-115 System emergencies.**

(1) A generating facility entering into a power contract under these rules must provide energy or capacity to a utility during a system emergency only to the extent:

(a) Provided by agreement between such generating facility and utility; or

(b) Ordered under section 202(c) of the Federal Power Act.

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(2) During any system emergency, a utility may discontinue or curtail:

(a) Purchases from a generating facility if such purchases would contribute to such emergency; and

(b) Sales to a generating facility, if such discontinuance or curtailment:

(i) Does not discriminate against a generating facility; and

(ii) Takes into account the degree to which purchases from the generating facility would offset the need to discontinue or curtail sales to the generating facility.

(3) System emergencies resulting in utility action under this chapter are subject to verification by the commission upon request by either party to the power contract.

**WAC 480-107-125 Interconnection costs.**

(1) Any costs of interconnection are the responsibility of the owner or operator of the generating facility entering into a power contract under this chapter. The utility must assess all reasonable interconnection and necessary system or network upgrade costs the utility incurs against a generating facility on a nondiscriminatory basis. The utility shall provide all necessary information a bidder

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will need to be able to plan for the interconnection, as a part of the RFP.

(2) The owner or operator of the generating facility must reimburse the utility for any reasonable interconnection costs the utility may incur. Such reimbursement shall be made, at the utility's election:

(a) At the time the utility invoices the owner or operator of the generating facility for interconnection costs incurred by the utility;  
or

(b) Over an agreed period of time not greater than the length of any contract between the utility and the generating facility.

**WAC 480-107-135 Conditions for purchase of resources from a utility, a utility's subsidiary, or affiliate.**

(1) The utility, its subsidiary, or affiliate may participate in the utility's bidding process and the utility may accept bids that will result in the utility owning or having a purchase option in the resource over its expected useful life. The utility may also consider repowering its existing resources to meet the resource needs identified in its RFP. If the utility reasonably expects any one of these circumstances to occur:

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(a) The solicitation and bidding process will be subject to additional scrutiny by the commission and an independent evaluator, pursuant to WAC 480-107-AAA (Independent evaluator for large resource need or utility or affiliate bid), to ensure that no unfair advantage occurs; and

(b) The utility must provide notice of such circumstances at the time of its RFP filing and as part of its RFP. As part of the notice, the utility must describe how it will ensure that the utility, utility's subsidiary, or affiliate bids will not have an unfair advantage over other bids.

(2) In the case of the utility considering a repowering in 480-107-135(1) it must submit its repowering project as a bid in the RFP.

(3) A utility must not disclose the contents or results of an RFP or competing project proposals to its own personnel involved in developing the utility's bid, or to any subsidiary or affiliate prior to such information being made public. The utility must include in the RFP and notice the methods used to assure that information is controlled and not communicated to its own personnel involved in developing any bid under WAC 480-107-135(1).

**WAC 480-107-145 Filings—Investigations.**

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**Deleted:** (2) As part of its RFP, a utility must include specific notice if it intends to submit a bid or intends to allow its subsidiaries and affiliates to participate in its bidding process. The utility must indicate in its RFP how it will ensure that its subsidiary or affiliate, through association with the utility, will not gain an unfair advantage over potential nonaffiliated competitors.

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**Deleted:** (3) The commission may not allow a utility to recover in its rates all or part of the costs associated with the utility's project, or a subsidiary's or affiliate's project(s), if any unfair ... [17]

(1) The commission retains the right to examine project proposals as originally submitted by potential developers. The utility must keep all documents supplied by project bidders or on their behalf, and all documents created by the utility relating to each bid, for at least seven years from the close of the bidding process, or the conclusion of the utility's general rate case in which the fully-developed project was reviewed for prudence, including any time period allowed for reconsideration or appeal, whichever is later.

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(2) The utility must file with the commission within 90 days of the conclusion of any RFP process, a summary report of responses including, at a minimum:

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(a) Specific reasons for any project rejected under WAC 480-107-035(6);

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(b) Number of bids received, categorized by technology type;

(c) Size of bids received, categorized by technology type;

(d) Number of projects received, categorized by technology type;

(e) Size of projects received, categorized by technology type;

(f) Median and average bid price categorized by technology type.

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Categorization should be broad enough to limit the need for confidential designation whenever possible;

(g) Number of bids received by location, including locations designated as highly impacted communities;

(h) Number of bids received by bidder type, including women-, minority-, disabled, or veteran-owned businesses;

(i) Number of projects received, categorized by ownership structures; and

(j) Number of projects using labor standards identified in RCW 82.08.962 and RCW 82.12.962.