

AMENDATORY SECTION (Amending WSR 19-13-031, filed 6/12/19, effective 7/13/19)

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))~~ establish the requirements for various utility solicitations and procurements, including provisions governing competitive solicitations, all-source RFPs, targeted RFPs, independent evaluators and system emergencies. The rules in this chapter do not establish the sole procedures ~~((utilities must))~~ a utility may use to acquire new resources. ~~((Utilities))~~ A utility may construct ((electric)) new resources, operate conservation and efficiency resource programs, purchase power through negotiated contracts, or take other action to satisfy ((their)) the utility's public service obligations.

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

AMENDATORY SECTION (Amending WSR 06-08-025, filed 3/28/06, effective 4/28/06)

WAC 480-107-002 ((Application of)) Exemptions from rules. ~~((1))~~ The rules in this chapter apply to any utility that is subject to the commission's jurisdiction under RCW 80.04.010 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) No exception from the provisions of any rule in this chapter is permitted without prior written authorization by the commission. Such exceptions may be granted only if consistent with the public interest, the purposes underlying regulation, and applicable statutes. Any deviation from the provisions of any rule in this chapter without prior commission authorization will be subject to penalties as provided by law.)~~ Consistent with WAC 480-07-110, the commission may grant an exemption from the provisions of any rule in this chapter.

AMENDATORY SECTION (Amending WSR 19-13-031, filed 6/12/19, effective 7/13/19)

WAC 480-107-007 Definitions. "Affiliate" means a person or corporation that meets the definition of an "affiliated interest" in RCW 80.16.010.

~~("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 utility's avoided costs are the prices, terms and conditions, including the period of time and the power supply attributes, of the least cost final contract entered into as a result of the competitive bidding process described in these rules. If no final contract is entered into in response to a request for proposal (RFP) issued by a utility under these rules, the utility's avoided costs are the lesser of:

(a) The price, terms and conditions set forth in the least cost project proposal that meets the criteria specified in the RFP; or

(b) Current projected market prices for power with comparable terms and conditions.) "All-source RFP" means an RFP that solicits and accepts bids from any resource capable of meeting all or part of the resource need outlined in the utility's solicitation documents.

"Bid" means bidder's document containing a description of a project and other information responsive to the requirements set forth in an RFP. If a bid contains multiple projects, each individual project will be considered as a separate bid.

"Bidder" means an individual, association, corporation, or other legal entity that can enter into a power or conservation contract with the utility to fill a resource need or portion thereof.

"Commission" means the Washington utilities and transportation commission.

"Conservation and efficiency resources" ((means any reduction in electric power consumption that results from increases in the efficiency of energy use, production or distribution, or from demand response, load management or efficiency measures that reduce peak capacity demand)) has the same meaning as defined in WAC 480-100-605.

("Conservation supplier" means a third party supplier or utility affiliate that provides equipment or services that save capacity or energy.

"Generating facilities" means plant and other equipment used to generate electricity purchased through contracts entered into under these rules.)

"Demand response" has the same meaning as defined in WAC 480-100-605.

"Equitable distribution" has the same meaning as defined in WAC 480-100-605.

"Highly impacted community" has the same meaning as defined in WAC 480-100-605.

"Independent evaluator" means a third party, not affiliated with the utility, that provides, at a minimum, evaluations as required in these rules.

"Independent power producers" means an entity other than a utility or its subsidiary or affiliate that develops or owns generating facilities or portions thereof that are not ((included in a utility's rate base and that are not)) qualifying facilities as defined in ((this section)) WAC 480-106-007.

"Indicator" has the same meaning as defined in WAC 480-100-605.

"Integrated resource plan" or "IRP" means the filing made ((every two years)) by a utility in accordance with WAC ((480-100-238 Integrated resource planning)) 480-100-625.

("Project developer" means an individual, association, corporation, or other legal entity that can enter into a power or conservation contract with the utility.

"Project proposal" means a project developer's document containing a description of a project and other information responsive to the requirements set forth in a request for proposal, also known as a

bid.) "Lowest reasonable cost" has the same meaning as defined in WAC 480-100-605.

"Qualifying facilities" (~~(means generating facilities that meet the criteria specified by the FERC in 18 C.F.R. Part 292 Subpart B)~~) has the same meaning as defined in WAC 480-106-007.

"Renewable resource" has the same meaning as defined in WAC 480-100-605.

"Repowering" means a rebuild or refurbishment, including fuel source changes, of a utility-owned generator or generation facility that is required due to the generator or facility reaching the end of its useful life or useful reasonable economic life. The rebuild or refurbishment does not constitute repowering if it is part of routing major maintenance, existing hydroelectric licensing obligations, or replacement of equipment that does not materially affect the physical or economical longevity of the generator or generation facility.

"Request for proposals" or "RFP((s))" means the documents describing a utility's solicitation of bids for delivering ((electric capacity, energy, or capacity and energy, or conservation)) a resource need.

"Resource" has the same meaning as defined in WAC 480-100-605.

"Resource ((block)) need" (~~(means the deficit of capacity and associated energy that the IRP shows for the near term)~~) has the same meaning as defined in WAC 480-100-605.

"Resource supplier" means a third-party supplier, utility or affiliate that provides electric power, 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.

"Targeted RFP" means an RFP that solicits and accepts bids for certain types or locations of resources (including, for example, demand response, conservation and efficiency resources) capable of meeting all or part of the utility's specific resource need.

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

"Vulnerable populations" has the same meaning as defined in WAC 480-100-605.

NEW SECTION

WAC 480-107-009 Required all-source RFPs and conditions for targeted RFPs. (1) All-source RFP requirements. All-source RFPs must allow bids from different types of resources that may fill all or part of the characteristics or attributes of the resource need. Such resource types include, but are not limited to, unbundled renewable energy credits, conservation and efficiency resources, demand response or other distributed energy resources, energy storage, electricity from qualifying facilities, electricity from independent power producers, or other resources identified to contribute to an equitable distribution of energy and nonenergy benefits to vulnerable populations and highly impacted communities.

(2) Required RFP. A utility must issue an all-source RFP if the IRP demonstrates that the utility has a resource need within four years. A utility may supplement its all-source RFP with one or more targeted RFPs issued at the same time. The required RFP and any supplemental RFPs are subject to commission approval.

(3) Voluntary RFP. Whenever a utility chooses to issue an RFP to meet resource needs outside of the timing of its required RFP, it may issue an all-source RFP or a targeted RFP. Voluntary RFPs are not subject to commission approval.

(4) Targeted RFP requirements. If the utility issues a targeted RFP in conjunction with an all-source RFP, it must fairly compare all resource options in its combined analysis.

NEW SECTION

WAC 480-107-011 Applicability of rule sections. (1) The required RFP issued pursuant to WAC 480-107-009(2) must comply with all sections of this chapter except WAC 480-107-021 requiring an informational filing.

(2) A targeted RFP filed with a required RFP under WAC 480-107-009(2) must comply with all sections of this chapter except WAC 480-107-021 requiring an informational filing.

(3) A voluntary RFP issued pursuant to WAC 480-107-009(3) must comply with all sections of this chapter except WAC 480-107-017 requiring commission approval.

(4) For all other actions by the utility to acquire resources not included in WAC 480-107-009, the utility must comply with WAC 480-107-115.

AMENDATORY SECTION (Amending WSR 06-08-025, filed 3/28/06, effective 4/28/06)

WAC 480-107-015 ((The)) Solicitation process for any RFP. (1) ((Any owner of a generating facility, developer of a potential generating facility, marketing entity, or provider of energy savings may participate in the RFP process. Bidders may propose a variety of energy resources including: Electrical savings associated with conservation; 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. Qualifying facility producers with a generation capacity of one megawatt or less may choose to participate in the utilities' standard tariffs without filing a bid)) The provisions of this section apply to any RFP issued to fill a resource need. The commission strongly encourages a utility to consult with commission staff and other interested stakeholders during the development of an RFP and the associated evaluation rubric.

(2) A utility ((may participate in the bidding process as a power supplier, or may allow a subsidiary or affiliate to participate in the bidding process as a power supplier, on conditions described in WAC 480-107-135 Conditions for purchase of electrical power or savings

~~from a utility's subsidiary or affiliate. The utility's RFP submittal must declare the utility's or affiliate's participation and must demonstrate how the utility will satisfy the requirements of WAC 480-107-135))~~ must conduct outreach to potential bidders or resource suppliers, including nonprofit organizations and under-represented bidders such as minority-, women-, disabled-, and veteran-owned businesses, to encourage equitable participation in the bidding process. A utility must provide to all potential bidders equitable access to information relevant to responding to the utility's RFP including, but not limited to, accommodation required by the Americans with Disabilities Act's communications guidance.

(3) ~~((Timing of the solicitation process.~~

~~(a) The rules in this section do not apply when a utility's integrated resource plan, prepared pursuant to WAC 480-100-238, demonstrates that the utility does not need additional capacity within three years.~~

~~(b) A utility must submit to the commission a proposed request for proposals and accompanying documentation no later than one hundred thirty-five days after the utility's integrated resource plan is due to be filed with the commission. Interested persons will have sixty days from the RFP's filing date with the commission to submit written comments to the commission on the RFP. The commission will approve or suspend the RFP within thirty days after the close of the comment period.~~

~~(c) A utility must solicit bids for electric power and electrical savings within thirty days of a commission order approving the RFP.~~

~~(d) All bids will remain sealed until expiration of the solicitation period specified in the RFP))~~ A utility must post a copy of the RFP on the utility's public website and make best efforts to ensure the RFP is known to industry participants and potential bidders, such as by placing notices in relevant industry publications, including publications aimed at women-, minority-, disabled-, and veteran-owned businesses.

(4) ~~((In addition to the solicitation process required by these rules, a utility may, at its own discretion, issue an RFP that limits project proposals to resources with specific characteristics. In addition, a utility, at its own discretion, may issue RFPs more frequently than required by this rule))~~ The utility must publish on its public website information about how interested persons can participate in or follow the utility's RFP process, including RFP approval, if required, and how to contact the commission's records center to be placed on relevant distribution lists for utility RFPs.

(5) ~~((Persons interested in receiving commission notice of a specific utility's RFP filings can request the commission to place their names on a mailing list for notification of future RFP filings by that utility.))~~ Prior to the expiration of the solicitation period specified in the RFP, the utility may allow the bid contents to be available to its employees and the independent evaluator, within the limitations established in WAC 480-107-024(3). Such availability must be solely for the purpose of tracking the receipt of bids and to prepare for, but not to begin, the evaluation phase of the RFP process.

(6) A utility or its subsidiary or affiliate may participate in the utility's own RFP process as a bidder consistent with the requirements in WAC 480-107-023 and 480-107-024.

(7) 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

develop a demand response bid that includes, but is not limited to, stacked values of benefits and costs.

NEW SECTION

WAC 480-107-017 RFP filing and approval. (1) For required and targeted RFPs under WAC 480-107-009(2), a utility must file the RFPs and accompanying documentation with the commission no later than one hundred twenty days after the utility files its final IRP.

(2) The utility must provide information on its public website detailing the commission approval process required in subsection (1) of this section, including a link to the RFP filed with the commission, and a description of the subsequent public comment period and, if applicable, the independent evaluator selection and commission approval process.

(3) Within forty-five days after the utility files an RFP, interested persons may submit written comments to the commission on the RFP.

(4) The commission will approve, approve with conditions, or suspend the filed RFP, including the procedures and criteria the utility will use to evaluate and rank bids in accordance with WAC 480-107-035, within seventy-five days after the utility files its RFP.

(5) A utility must solicit bids for a resource need within thirty days of a commission order approving an RFP unless the commission establishes a different deadline.

NEW SECTION

WAC 480-107-021 Informational filing requirement. (1) A utility must file any voluntary RFP allowed under WAC 480-107-009(3) and accompanying documentation thirty days prior to accepting bids.

(2) If the utility must retain an independent evaluator under WAC 480-107-023, the utility must publish, on its public website, information explaining its independent evaluator selection process and commission approval process, including how interested persons can participate in the approval process.

NEW SECTION

WAC 480-107-023 Independent evaluator for repowering and bids from a utility or its subsidiary or affiliate. (1) A utility must engage the services of an independent evaluator to assess and report on the solicitation process if:

(a) The utility or its subsidiary or affiliate participates in the utility's RFP bidding process;

(b) The utility intends to retain the option to procure resources that will result in the utility owning or having a purchase option in the resource over its expected useful life; or

(c) The utility is considering repowering its existing resources to meet its resource need.

(2) After consulting with commission staff and stakeholders, the utility may issue a solicitation 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 bidding process and responsive bids.

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

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

(b) Participate in the design of the RFP;

(c) Evaluate the unique risks, burdens, and benefits of each bid;

(d) Provide to the utility 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;

(g) Prepare a final report to the commission after reconciling rankings with the utility in accordance with WAC 480-107-035(3) 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 stakeholders and bidders; and

(ii) 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 review or control over the independent evaluator's final report.

NEW SECTION

WAC 480-107-024 Conditions for purchase of resources from a utility, utility subsidiary, or affiliate. (1) A utility or its subsidiary or affiliate may participate in the utility's RFP 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 its resource need. If any one of these circumstances is expected to occur:

(a) The RFP solicitation and bidding process will be subject to the requirement for a utility to retain an independent evaluator to ensure that no unfair advantage occurs; and

(b) The utility must include statements regarding whether such circumstances exist:

(i) In its RFP;

(ii) In the transmittal letter accompanying the RFP filing; and

(iii) In the notice required by WAC 480-107-015(3).

(2) If the utility is considering repowering a resource to meet a resource need, the utility must submit its repowering project as a bid during the RFP process.

(3) A utility and its independent evaluator may not disclose the contents or results of an RFP or competing bids to personnel involved in developing the utility's bid, or to any subsidiary or affiliate prior to making such information public. The utility must include in the RFP the methods the utility used, and will use, to ensure that it or its independent evaluator did not, and will not, improperly disclose that information.

AMENDATORY SECTION (Amending WSR 19-13-031, filed 6/12/19, effective 7/13/19)

WAC 480-107-025 Contents of ((the)) RFP solicitations. (1)

~~((The))~~ An RFP must ((identify)) define the resource ((block, consist-
ing of the overall)) need, including specific attributes or character-
istics the utility is soliciting, such as the amount and duration of
power ((the utility is soliciting, the initial estimate of avoided
cost schedule as calculated in WAC 480-106-040 Avoided cost schedule,
and any additional information necessary for potential bidders to make
a complete bid)), time and locational attributes, operational attrib-
utes, the type of technology or fuel source necessary to meet a com-
pliance requirement, and any additional information necessary for po-
tential bidders to make a complete bid, including a copy or link to
the complete assessment of avoided costs identified in WAC
480-100-615(12).

(2) The RFP must request information identifying energy and none-
energy benefits or burdens to highly impacted communities and vulnera-
ble populations, short-term and long-term public health impacts, envi-
ronmental impacts, resiliency and energy security impacts, or other
information that may be relevant to identifying the costs and benefits
of each bid, such as a bidder's past performance utilizing diverse
businesses and a bidder's intent to comply with the labor standards in
RCW 82.08.962 and 82.12.962. After the commission has approved the
utility's first clean energy implementation plan (CEIP), requested in-
formation must include, at a minimum, information related to indica-
tors approved in the utility's most recent CEIP, including descrip-
tions of the indicators.

(3) The RFP must document that the size and operational attrib-
utes of the resource ((block is)) need requested are consistent with
the range of estimated new resource needs identified in the utility's
((integrated resource plan)) IRP.

~~((3))~~ (4) The RFP must explain ((general evaluation and)) the
specific ranking procedures and assumptions that the utility will use
in accordance with WAC 480-107-035 ((Project ranking procedure)). The

RFP must ~~((also specify any minimum criteria that bidders must satisfy to be eligible for consideration in the ranking procedure))~~ include a sample evaluation rubric that quantifies, where possible, the weight the utility will give each criterion during the bid ranking procedure, and provides a detailed explanation of the aspects of each criterion that would result in the bid receiving higher priority.

~~((4))~~ (5) The RFP must specify ~~((the timing of))~~ a detailed timeline for each stage of the RFP process including ~~((the))~~ solicitation ~~((period, the))~~, ranking ~~((period))~~, and ~~((the expected))~~ selection ~~((period))~~, as well as the utility's schedule of planned informational activities and contact information for the RFP.

~~((5))~~ (6) The RFP must generally identify ~~((all security requirements and the rationale for them.~~

~~(6) Utilities are encouraged to consult with commission staff during the development of the RFP. Utilities, at their own discretion, may submit draft RFPs for staff review prior to formally submitting an RFP to the commission.)~~ any utility-owned assets, including merchant-side assets that the utility has available, for the purpose of receiving bids that assist the utility in meeting its resource need at the lowest reasonable cost. The utility must make reasonable efforts to provide bidders with necessary technical details they request and to allow bidders to design their bids for use in conjunction with utility-owned assets.

(7) The RFP must identify any minimum bidder requirements, including for financial security requirements and the rationale for such requirements, such as proof of a bidder's industry experience and capabilities.

(8) The RFP must include standard form contracts to be used in acquisition of resources.

(9) All RFPs must discuss the impact of any applicable multistate regulation on RFP development including the requirements imposed by other states for the RFP process.

(10) All RFPs must clearly state the scope of the solicitation and the types of bids that the utility will accept consistent with WAC 480-107-024.

AMENDATORY SECTION (Amending WSR 06-08-025, filed 3/28/06, effective 4/28/06)

WAC 480-107-035 ((Project)) Bid ranking procedure. (1) ~~((The procedures and criteria the utility will use in its RFP to evaluate and rank project proposals are subject to commission approval.~~

~~(2))~~ At a minimum, ~~((the))~~ a utility's RFP ranking criteria must recognize resource cost, market-volatility risks, demand-side resource uncertainties and benefits, resource dispatchability, resource effect on system operation, credit and financial risks to the utility, the risks imposed on ratepayers, public policies regarding resource preference ~~((adopted by))~~, and Washington state or ~~((the))~~ federal government ~~((and environmental effects including those associated with resources that emit carbon dioxide))~~ requirements. 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

~~((process must complement power acquisition goals identified)) criteria must also be consistent with the avoided cost methodology developed in the ((utility's integrated resource plan.~~

~~(3) After the project proposals have been opened for ranking, the utility must make available for public inspection at the utility's designated place of business a summary of each project proposal and a final ranking of all proposed projects.~~

~~(4)) IRP 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.~~

~~(2) In choosing to remove a bid during any stage of its evaluation process, the utility may not base its decision solely on the project's ability to only meet a portion of the resource need.~~

~~(3) The utility may ((reject any project proposal that does not specify, as part of the price bid, the costs of complying with environmental laws, rules, and regulations in effect at the time of the bid)) not discriminate based on a bidder's ownership structure in the ranking process.~~

~~((5)) (4) The utility ((may reject all project proposals if it finds that no proposal adequately serves ratepayers' interests. The commission will review, as appropriate, such a finding together with evidence filed in support of any acquisition in the utility's next general rate case or other cost recovery proceeding.~~

~~(6) When the utility, the utility's subsidiary or an affiliate submits a bid in response to an RFP, one or more competing bidders may request the commission to appoint an independent third party to assist commission staff in its review of the bid. Should the commission grant such a request, the fees charged by the independent third party will be paid by the party or parties requesting the independent review)) and any independent evaluator selected by the utility will each score and rank the qualifying bids using the RFP's ranking criteria and methodology. If bids include unexpected content, the utility may modify the ranking criteria but must notify all bidders of the change, describe the change, and provide an opportunity for bidders to modify their bids.~~

~~(5) Within thirty days after the close of the bidding period, the utility must post on its public website a summary of each bid the utility has received. Where use of confidential data prohibits the utility from identifying specifics of a bid, a generic but complete description is sufficient.~~

~~(6) The utility may reject any bids that do not comply with the minimum requirements of the RFP or 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 thirty days after executing an agreement for acquisition of a resource, the utility must file the executed agreement and supporting documents with the commission.~~

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

AMENDATORY SECTION (Amending WSR 06-08-025, filed 3/28/06, effective 4/28/06)

WAC 480-107-045 Pricing and contracting procedures. (1) Once ~~((project proposals have been))~~ bids are ranked in accordance with WAC 480-107-035 ~~((Project ranking procedure))~~, the utility must ~~((identify the bidders that))~~ determine which bids best meet the selection criteria and ~~((that are expected to))~~ produce the ~~((energy, capacity, and electrical savings as defined by))~~ relevant attributes required in that portion of the resource ~~((block))~~ need to which the ~~((project proposal))~~ bid is directed.

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

AMENDATORY SECTION (Amending WSR 06-08-025, filed 3/28/06, effective 4/28/06)

WAC 480-107-065 ~~((Eligibility for long-run)) Acquisition of conservation ~~((purchase rates)) and efficiency resources.~~~~ (1) ~~((Any))~~ A conservation and efficiency resource supplier may participate in the bidding process for any resource need. A utility ~~((may allow a utility))~~ or its subsidiary ~~((to))~~ or affiliate may participate as a conservation resource supplier ~~((, on))~~ subject to the conditions described in WAC ~~((480-107-135 Conditions for purchase of electrical power or savings from a utility's subsidiary or affiliate. A decision to allow a utility subsidiary to participate must be explained in the utility's RFP submittal))~~ 480-107-024.

(2) All conservation and efficiency measures ~~((included in a project proposal))~~ within a bid must ~~((:~~

~~((a))~~ Produce electrical savings over a time period greater than five years, or a longer period if specified in the utility's RFP. A measure with an expected life that is shorter than the contract term must include replacements through the contract term;

~~((b))~~ Be consistent with the utility's integrated resource plan; and

~~((c))~~ produce savings that can be reliably measured or estimated with accepted engineering, statistical, or meter-based methods.

(3) A utility must acquire conservation and efficiency resources through a competitive procurement process as described in this rule unless the utility is 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. The utility may file its first competitive procurement framework for conservation and efficiency resources with the utility's 2022-2023 biennial conservation plan.

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

~~((i))~~ Define the specific criteria that the utility will use to determine the frequency of competitive bidding for conservation and efficiency resource programs, in whole or part;

- (ii) Address appropriate public participation, outreach, 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 the utility's biennial conservation plan, as described in WAC 480-109-120.
- (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.

AMENDATORY SECTION (Amending WSR 06-08-025, filed 3/28/06, effective 4/28/06)

WAC 480-107-075 Contract finalization. (1) Unless otherwise prohibited by law, a utility (~~(has discretion to)~~) may decide whether to enter into a final contract with any (~~(project)~~) bidder that meets the selection criteria of the RFP. Any such 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)~~) bid, 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 time period specified in a selected project proposal for up to a twenty-year term. The utility may sign longer-term contracts if such provisions are specified in the utility's RFP.~~) Any contract signed by the utility to fill a resource need as a result of an RFP process must require the firm awarded the contract to track and report to the utility its use of diverse businesses including, but not limited to, women-, minority-, disabled-, and veteran-owned businesses, and to track and report to the utility the firm's application of the labor standards in RCW 82.08.962 and 82.12.962.

(4) If a bidder makes material changes ((are made)) to ((the project proposal)) its bid after (~~(project)~~) bid ranking, including material price changes, the utility must suspend contract finalization with that (~~(party)~~) bidder, and the utility and any independent evaluator must rerank ((projects)) bids according to the revised ((project proposal)) bid. If the material changes cause the revised (~~(project proposal)) bid~~ to rank lower than (~~(projects)) bids~~ the utility has not originally selected, the utility must instead pursue contract finalization with the next highest ranked ((project)) bid.

(~~(5) A project developer must provide evidence that the developer has obtained or will obtain a generation site (e.g., letter of intent) before signing a contract with the purchasing utility.~~)

AMENDATORY SECTION (Amending WSR 06-08-025, filed 3/28/06, effective 4/28/06)

WAC 480-107-115 System emergencies. (1) A generating facility entering into a power contract (~~((under these rules is required to))~~) 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.

(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.

AMENDATORY SECTION (Amending WSR 06-08-025, filed 3/28/06, effective 4/28/06)

WAC 480-107-145 Filings—Investigations. (1) The commission retains the right to examine (~~((project proposals))~~) bids as originally submitted to the utility by (~~((potential developers))~~) bidders. 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, including materials provided to the utility by an independent evaluator, for ((at least)) the later of seven years from the close of the bidding process, or the conclusion of the utility's ((next)) general rate case((, whichever is later)) in which the commission reviewed the fully-developed project for prudence, including any time period allowed for reconsideration or appeal.

(2) The utility must file with the commission (~~((and maintain on file for inspection at its place of business, the current rates, prices, and charges established in accordance with this chapter))~~) within ninety days of the conclusion of any RFP process, a summary report of responses including, at a minimum:

(a) Specific reasons for rejecting any bid under WAC 480-107-035(5);

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

(c) The size of the bids received, categorized by technology type;

(d) The median and average bid price, categorized by technology type and sufficiently general to limit the need for confidential designation whenever possible;

- (e) The number of bids received by location, including locations designated as highly impacted communities;
- (f) The number of bids received and accepted by bidder type, including women-, minority-, disabled-, or veteran-owned businesses;
- (g) The number of bids received, categorized by ownership structures; and
- (h) The number of bids complying with the labor standards identified in RCW 82.08.962 and 82.12.962.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 480-107-135 Conditions for purchase of electrical power or savings from a utility, a utility's subsidiary or affiliate.