

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 must use to acquire new resources. Utilities may construct electric resources, operate conservation ~~and efficiency resource~~ programs, purchase power through negotiated contracts, or take other action to satisfy their public service obligations.

(2) The commission will consider the information obtained through these bidding procedures and actions the utility has taken or failed to take to find resources that might not otherwise bid into its request for proposals 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 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) The commission may grant an exemption from the provisions of any rule in this chapter in the same manner and consistent with the standards and according to the procedures set forth in WAC 480-07-110 Exemptions from and modifications to commission rules; conflicts with other rules. Any exemption granted by the commission does not remove or reassign the exclusive cost and risk borne by the utility.

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

"Commission" means the Washington utilities and transportation commission.

"Conservation ~~and efficiency resources~~" has the same meaning as defined by WAC 480-100-238(2).

"Conservation supplier" means a third-party supplier or utility affiliate that provides equipment or services that reduce the need for capacity or energy.

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

"Independent evaluator" means a thirdparty, not affiliated with the utility, that provides an evaluation of the utility's request for proposal process, evaluation, selection criteria, and related analyses of all project bids and project proposals discussed in this chapter.

"Independent power producer" means a non-utility entity that develops or owns generating facilities or portions thereof that are not qualifying facilities as defined in WAC 480-106-007.

"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.

"Project developer" or **"bidder"** 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" or **"bid"** 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 proposal.

"Qualifying facilities" means generating facilities that meet the criteria specified by the FERC in 18 C.F.R. Part 292 Subpart B as described in WAC 480-106-007.

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

"Resource need" means any current or projected system energy or capacity deficit identified in the most recently filed integrated resource plan ~~has the same meaning as defined by WAC 480-100-238(2).~~

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

"Short-term market purchases" means purchases of energy or capacity on the spot or forward market contracted for a term less than four years.

"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) Except as set forth in Section (4) below, the utility must solicit bids for its resource needs identified during the IRP process. It must accept bids that are identified in the solicitation process for a variety of energy or capacity resources, consistent with the utility's most recent integrated

resource plan, which ~~may have~~ has the potential to fill the identified 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 the utility, utility subsidiaries, and other electric utilities, whether or not such electricity includes ownership of property.

(2) 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 conditions described in WAC 480-107-135 Conditions for purchase of resources from a utility's subsidiary or affiliate and WAC 480-107-AAA Independent Evaluator for Significant Resource Needs or Utility or Affiliate Bid.

(3) The solicitation process in this section is required whenever a utility's most recently ~~acknowledged~~ filed integrated resource plan demonstrates that the utility has a resource need within three years of the filing date.

(4) Utilities may choose not to issue an RFP without requesting a petition for exemption from the requirements in this section under the following circumstances. Commission grant of an exemption from an

issuance of an RFP under this section or pursuant to WAC 480-07-110 does not expressly or implicitly determine the prudence of the utility's actions under the exemption or its choice to seek an exemption:

(a) The utility's identified resource need for capacity is less than 80 megawatts;

(b) The utility's identified resource need is for delivery system resources;

(c) The utility has previously issued an RFP for the same precisely defined resource need in accordance with WAC 480-107-065, or has previously issued an RFP for the same precisely defined resource need within the last 12 months; or

(d) The utility plans to satisfy its identified resource need for capacity with short-term market purchases, so long as:

(i) The utility, in its IRP, considered all available information on sufficient regional adequacy and expressly modeled and considered the risk of high market prices that can result from changes in existing capacity available in the markets from which the utility expects to purchase capacity to meet its capacity needs; ~~or~~

(ii) Sufficient regional adequacy to support these forecasted market purchases has been identified by the Northwest Power and

Conservation Council in their latest published power supply adequacy assessment over the entire period of the utility's resource need or the next five years, whichever period is shorter.

(5) A utility must submit to the commission a proposed RFP ~~and accompanying documentation~~ no later than one hundred thirty-five days after the utility's integrated resource plan is acknowledged~~submitted~~ ~~to~~by the commission. Interested persons will have up to sixty days from the RFP's filing date to 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.

(6) Utilities are encouraged to consult with commission staff and other interested stakeholders during the development of the RFP. Utilities may submit draft RFPs for staff and stakeholder review prior to formally submitting a proposed RFP to the commission.

(7) A utility must solicit bids for resource needs within sixty~~thirty~~ days of a commission order approving the RFP, with or without conditions, as applicable. To solicit bids, a utility must post a copy of the RFP on the utility's public web site. The utility must maintain a list of potential vendors and industry trade associations and agencies

and communicate to those vendors, associations and agencies when an RFP is issued.

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

(9) A utility may issue RFPs more frequently than required by this rule.

(10) Any person interested in receiving commission notice of utility proposed RFP filings may place their name on the IRP listserv on the commission's website.

WAC 480-107-025 Contents of the solicitation. (1) The RFP must precisely define the resource need, including any specific attributes or characteristics the utility is soliciting, such as the amount and duration of power, any time and locational attributes, operational attributes, the type of technology ~~necessary to meet a compliance requirement~~ or combination of technologies, and any additional information necessary for potential bidders to make a complete bid, ~~including the avoided cost identified in the integrated resource plan.~~

(2) The RFP must indicate that the size and operational attributes of the resource need solicited are consistent with a resource need identified in the utility's integrated resource plan.

(3) The RFP must allow any resources that meet a portion of the amount or a subset of the characteristics or attributes of the resource need to bid, such as unbundled renewable energy credits for a renewable resource need, or conservation ~~and efficiency~~ resources for a capacity need.

(4) The RFP must clearly 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 bidders must satisfy to be eligible for consideration in the ranking procedure. Non-price score criteria that seek to identify minimum thresholds for a successful bid and that may be converted into minimum bidder requirements must be converted into minimum bidder requirements.

(5) The utility's RFP submittal must declare whether the utility or an affiliate is allowed to bid into the RFP. The utility must require the affiliate to include with its bid a list of all its employees during the last three years. The utility must identify any employees of the affiliate that worked for the utility in the utility's final report to the commission required by WAC 480-107-145 Filings-Investigations (2).

(6) The RFP must specify a detailed timeline for each stage of the RFP process including the solicitation period, the ranking period, and the expected selection period.

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

~~(8) The RFP must identify utility owned transmission assets that are made available by the utility to be used by bidders to assist in meeting the resource need, and allow the use of such assets to be included in bids.~~

WAC 480-107-AAA Independent Evaluator for Significant Resource Needs or Utility or Affiliate Bid. (1) When required to solicit bids under WAC 480-107-015(3), a utility must engage the services of an

independent evaluator to evaluate and report on the solicitation process if:

(a) The resource ~~need~~ is greater than 80 megawatts;

(b) The utility, its subsidiary, or an affiliate is allowed to submit a bid; or

(c) The RFP accepts bids with ownership structures under which ownership of the project will be transferred to the utility, its subsidiary, or an affiliate upon project completion.

(2) The utility, after consulting with commission staff and the appropriate stakeholders, 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. The utility may request recovery of fees and expenses associated with engaging an independent evaluator through customer rates.

(4) The utility must give the independent evaluator full access to examine and test the utility's production cost and risk models and any

other model or data that is necessary for the independent evaluator to complete its work.

(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) Be available and responsive to the commission throughout the process, and, upon request, must provide the commission with the independent evaluator's notes of all conversations and the full text of written communications between the independent evaluator and the utility and any third-party that are related to the independent evaluator's execution of its duties;

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

(e) Evaluate the unique risks of each bid; and

(f) Assess whether the utility's scoring of the bids and selection of the initial and final shortlists are reasonable.

(6) The independent evaluator will prepare an initial report to the commission at the conclusion of the bid evaluation process, before reconciling project rankings with the utility, and a final report after

reconciling rankings with the utility in accordance with WAC 480-107-035(4) Project ranking procedure. The initial report may be filed with the commission simultaneously with the final report. The final report must 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. The commission may request that additional analysis be included in the final report.

(a) No stakeholder, including the utility or staff, shall have any editorial control over the independent evaluator's initial report, other than routine processes, such as administrative corrections or to remove bids that do not comply with the minimum criteria identified in the RFP.

(b) The final report should not differ significantly from the initial report and must explain ranking differences and why the independent evaluator and the utility were, or were not, able to reconcile the differences.

(c) The utility, staff, and stakeholders may submit responses to the final report with the commission.

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. Evaluation criteria should be standardized and applied equally to all bids and bidders.

(2) At a minimum, the ranking criteria must consider 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 adopted by Washington state or the federal government, environmental effects including those associated with resources that emit carbon dioxide, resiliency attributes, and reliability costs and benefits. The ranking criteria must recognize differences in relative amounts of risk inherent among different technologies, fuel sources, financing arrangements, contract provisions, and be consistent with the analytical methods developed in the utility's most recently acknowledged integrated resource plan.

(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 consider the

value of all costs and benefits that are not directly related to the specific need solicited.

(4) The utility and, when applicable as determined in the contract, the independent evaluator will separately score and produce a ranking of the qualifying bids following the RFP ranking criteria and methodology. If, as a result of unexpected contents in the bids, the utility deems it necessary to modify the ranking criteria, notification must be sent to all bidders describing the change and an opportunity must be granted to bidders that choose to subsequently modify submitted bids.

(5) Within thirty 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 subject to a protective order consistent with WAC 480-107-BBB.

(6) The utility may reject any project proposal that does not comply with the minimum requirements within the RFP and, as part of the bid, does not identify and specify the costs of complying with environmental laws, rules, and regulations in effect at the time of the bid or otherwise does not adequately serve ratepayers' interests.

(7) The utility may reject all project proposals if it finds that no proposal adequately serves ratepayers' interests.

(8) After the ranking process is concluded, the utility will provide access to each bidder to its own confidential scoring information.

~~_(9) Within five days after executing an agreement for acquisition of a resource or determining that all proposals or bids will be rejected, the utility must make available for public inspection on the utility's website a final detailed ranking of results for all proposals and the details of the winning bid pricing and scores.~~

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

(11) 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. (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 subject to thresholds defined in the RFP.

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, as long as it is identified as necessary and cost effective in the latest integrated resource plan. A utility, a utility subsidiary, or affiliate may participate as a conservation supplier, on conditions described in WAC 480-107-135 Conditions for purchase of resources from 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 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) 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.

(b) The first competitive procurement framework for conservation ~~and efficiency~~ resources may be filed with the 2020-2021 biennial conservation plan.

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

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

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

(d) 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 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.

(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 party 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 may instead pursue contract finalization with the next ranked project, or close the RFP with no bids selected if all other bids have been rejected.

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. In these circumstances, the solicitation and bidding process may be subject to the additional scrutiny of an independent evaluator, pursuant to WAC 480-107-AAA Independent evaluator for Significant Resource Needs or Utility or Affiliate Bid, and the commission to ensure that no unfair advantage is given to the utility, its subsidiary, its affiliate, or any bid that might result in the utility owning the resource.

(2) A utility, its subsidiaries or affiliates may not submit a bid or accept bids that will result in the utility owning the resource at some point during its operation unless the utility provides notice this may occur in the RFP. The utility must indicate in its RFP how it will ensure that the utility-owned resource, or the resource of its subsidiary or affiliate, through association with the utility, will not gain an unfair advantage over bids for a resource that will be owned and operated by an independent power producer during its operation.

(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 inappropriate information is tightly controlled and not communicated internally or with affiliates or subsidiaries.

WAC 480-107-145 Filings—Investigations. (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, including any time period allowed for reconsideration or appeal, in which the fully-developed project was reviewed for prudence, whichever is later.

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

(a) Specific reasons for any project rejected under WAC 480-107-035(6) Project ranking procedure.

(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; and

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

Categorization should be broad enough to limit the need for confidential designation whenever practical.

WAC 480-107-BBB Protected Information. The utility may request a protective order be issued prior to making available protected information required to be shared under the rules in this chapter. Protected information may include, but is not limited to, RFP-related and bidding information, such as a company's modeling, cost support for any resource and detailed bid scoring and evaluation results. Protected information may then be provided to the Commission, the independent evaluator, and non-bidding parties, as appropriate under the terms of the protective order. Information shared under the terms of a protective order issued under this rule may be used in any of the procedures outlined in this chapter including any RFP review or approval, investigation, or cost-recovery proceedings.

WAC 480-107-999 Adoption by reference. In this chapter, the commission adopts by reference all or portions of regulations and standards identified in subsection (1) of this section. The publication, effective date, reference within this chapter, and availability of the resources are as follows:

(1) Pacific Northwest Power Supply Adequacy Assessment as published by the Northwest Power and Conservation Council.

(a) The commission adopts the Pacific Northwest Power Supply Adequacy Assessment for 2023 published in 2018.

(b) This publication is referenced in WAC 480-107-015.

(c) Copies of Pacific Northwest Power Supply Adequacy Assessment for 2023 are available from the Northwest Power and Conservation Council at <https://www.nwcouncil.org/energy/energy-topics/resource-adequacy/pacific-northwest-power-supplyadequacy-assessment-for-2023>.