

ATTACHMENT A

Proposed Changes to Draft WAC 480-107

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 generating resources, acquire demand response, operate conservation and efficiency resource programs, purchase power and generating resources 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 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.

(4) A utility is not required to comply with these rules when:

(a) There is an emergency; meaning a human-caused or natural catastrophe resulting from an unusual and unexpected event, including but not limited to earthquake, flood, war, or a catastrophic energy plant failure, that requires a utility to take immediate action;

(b) There is a time-limited opportunity to acquire a resource of unique value to the utility's customers;

(c) An alternative acquisition method was proposed by the utility in the IRP and explicitly acknowledged by the Commission;

or

(d) Seeking to exclusively acquire transmission assets or rights.

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.

(3) If an affected utility is subject to regulation in more than one state regarding the acquisition, construction, or cost recovery of an energy resource, in making the rules, the commission may consider the impact of the multistate regulation including requirements imposed by other states as to:

o The overall solicitation process considering different timelines, eligibility requirements and bidder qualification and rules

o Cost recovery of resources; and

o Methods by which the affected utility may be able to mitigate the potential for cost disallowances

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.

"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].

"Generating Resources" means energy, capacity, or storage resources.

"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. Subject to 480-107-AAA (Independent evaluator for Significant Energy Resource need or

utility or affiliate bid), the independent evaluator will be engaged by the utility, but will report directly to the Commission and its staff to assure compliance with all Commission rules and guidelines. Additionally, the independent evaluator will help ensure that all offers are treated fairly and consistently.

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

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

"Project developer" means an individual, association, corporation, or other legal entity that develops or owns generating facilities or portions thereof and can enter into a contract with the utility to supply a resource need.

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

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

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

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

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

"Significant Energy Resource" is any generating resource or conservation resource that meets any of the following criteria:

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

(b) The acquisition is of a resource or contract in which the electric company does not specify the size or duration of the resource or contract sought but

may result in an acquisition described in subsection part (a) or (c) of this rule;

(c) The acquisition is of multiple resources more than five years in length that in aggregate provide the electric company with more than an aggregate of 80 megawatts, and these resources:

(A) Are located on the same parcel of land, even if such parcel contains intervening railroad or public rights of way, or on two or more such parcels of land that are adjacent; and

(B) The generation equipment of any one of these resources is within five miles of the generation equipment of any other of these resources and construction of these resources is performed under the same contract or within two years of each other;
or

(d) As directed by the Commission.

"Solicitation" means a request for proposals or other invitation for persons to submit a bid or proposal through an open

bid process for construction or acquisition of a Significant Energy Resource.

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

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

WAC 480-107-015 The solicitation process.

(1) The utility ~~must~~ may solicit bids for its Significant Energy Resource needs whenever its most recently filed integrated resource plan demonstrates that the utility has a Significant Energy Resource need within four years.

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

(3) For any generating resource RFP, a utility must notify all parties to the utility's most recent general rate case, request

for proposal (RPF) filing, and IRP docket. 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.

(4) For all resource needs identified in the IRP that are significant Energy Resources, a utility must submit to the commission a proposed RFP and accompanying documentation no later than ~~forty-five~~ one hundred twenty (120) days after the utility's integrated resource plan is ~~due to be filed with~~ acknowledged by the commission. Prior to filing the draft RFP with the Commission, the utility must consult with the independent evaluator in preparing the RFP and must conduct bidder and stakeholder workshops. The filing must include the timeline that the utility intends to solicit bids. Within ~~thirty~~ forty-five days from the RFP's filing date, interested persons may submit written comments to the commission on the RFP. The commission will approve, approve

with conditions, or suspend the RFP within ~~thirtysixty~~ days after the close of the comment period.

(5) A utility must solicit bids for resource needs ~~within thirty days of promptly following~~ 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 in such a manner as achieves the desired resource need, is consistent with the IRP action plan and meets the goals of the approved RFP, such as placing notices in relevant industry publications, including publications aimed at women-, minority-, disabled, and veteran-owned businesses.

(b) On a public webpage, the utility must publish information about how interested persons can participate in the RFP, or follow the utility's RFP work and the approval process for its RFP at the commission. The utility must also provide information detailing the approval process, including that for submitting a draft RFP to the commission and providing public comment. The utility must publish on the same webpage information for interested persons on

how to contact the commission's Records Center to be placed on relevant distribution lists for utility RFPs.

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

(7) ~~The utility's RFP submittal must declare which type of bids the RFP will accept. The utility ~~must~~may accept bids for a variety of energy or capacity resources, consistent with the utility's most recent integrated resource plan 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,~~ new generating resources; whether or not such ~~electricity~~bids includes utility-ownership options or are submitted by the utility or affiliates of ~~property.~~the utility.~~

(8) A utility and its affiliates may participate in ~~the~~any RFP bidding process as a Project developer ~~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~~ Significant Energy ~~Resource~~ need or utility or affiliate bid). The utility's RFP must disclose ~~which type of bids~~ whether the utility or an Affiliate intends to submit a bid 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)~~ (1) The utility's draft RFP must reference and adhere to the specific section of the IRP in which RFP design and scoring is described. The RFP must identify the resource need based on the IRP action plan, including specific attributes or characteristics the utility is soliciting, such as the amount and duration of power, time and locational attributes, operational attributes, the type of technology or fuel source ~~necessary to meet a compliance requirement~~ or combination of technologies, 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.~~ Specifically, bidders shall be required to provide:

(a) the percentage of women-, minority-, veteran- and disabled-owned businesses that will be used in the construction and long-term operation of the resource;

(b) whether the project will use labor standards identified in RCW 82.08.962 and RCW 82.12.962;

(c) whether the proposed location is considered a highly impacted or vulnerable community;

(d) an estimate and description of hazardous waste and emissions that will result during the construction and ongoing operations; and

(e) end of life decommissioning and remediation plans.

After the approval of the utility's first Clean Energy Implementation Plan requested information must include, at a minimum, information related to indicators approved in the utility's most recent Clean Energy Implementation Plan.

(3) The RFP must document that the size and operational attributes of the resource need requested are consistent with the range of estimated new resource needs identified in the utility's 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 recommended in the IRP action plan~~eed, 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 evaluation process, scoring and 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 non-price evaluation and scoring rubric that ~~either~~ quantifies the weight each criterion will be given during the project ranking procedure ~~or provides,~~ and the RFP must provide a detailed explanation of the aspects of each criterion specifically identified that would result in the bid receiving a higher priority non-price score. The RFP must also specify any minimum criteria ~~and qualifications~~ that bidders must satisfy to be eligible ~~for consideration in the ranking procedure to~~ bid.

(6) The RFP must state ~~which type of~~ whether the utility or its affiliates intend to submit a bid ~~is~~ subject to 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, evaluation, scoring and ranking-, and final selection- as well as the utility's schedule of planned informational activities and contact information for potential bidders.

(8) ~~The~~ At a minimum, the RFP must ~~identify all~~ include:

(a) Any minimum bidder requirements, including for financial security requirements and the rationale for such requirements. proof of a bidder's industry experience and capabilities.

(b) Standard form contracts to be used in acquisition of resources;

(c) Bid evaluation and scoring criteria that are consistent with the finalized WAC 480-107-035;

(d) The alignment of the utility's resource as identified in the current IRP action plan or a subsequently identified need or change due to circumstances with good cause shown;

(e) The impact of any applicable multi-state regulation on RFP development, including consideration of requirements imposed by other states for the RFP process; and

(f) Any minimum or maximum resource size requirements.

(9) The RFP must generally identify whether any utility-owned assets, ~~including merchant side assets, that will~~ could be made available by the utility to be used by bidders ~~to assist in meeting the resource need at the lowest reasonable cost.~~ in conjunction with independent bids in a RFP. The utility must make reasonable

efforts to provide necessary technical details ~~as requested~~ related
to those assets upon request from bidders ~~and allow the~~. Bidder
will be responsible for providing the terms, conditions and pricing
associated with the use of utility-owned resources that are offered
and made available for use ~~of such assets to be included in in as~~
part of third-party bids. ~~PacifiCorp~~ The utility will receive
appropriate compensation for such utility-owned resources used by
third-party bidders for the benefit of ~~PacifiCorp~~ utility
ratepayers.

WAC 480-107-AAA Independent evaluator for ~~large~~ Significant
Energy Resource need or utility or affiliate bid.

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

(a) The resource need is ~~greater than 80 megawatts~~ a
Significant Energy Resource; or

(b) If the utility expects to bid or if it expects a utility
affiliate to bid subject to 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~~will issue an RFP for an independent evaluator ~~and must~~in order to recommend an independent evaluator for approval by the commission. The utility must file a request for commission approval to execute the contract with the independent evaluator. The commission staff will review the request and recommend an independent evaluator to the commission based in part on the consideration of:

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

(b) Review of the degree to which the independent evaluator is independent of the utility and potential bidders;

(c) The degree to which the cost of the services to be provided is reasonable;

(d) The experience and competence of the independent evaluator; and

(e) The public interest.

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

of fees and expenses associated with engaging an independent evaluator in customer rates if RFP bid fees are inadequate to cover such costs.

(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, transparently, and properly and within Commission rules and guidelines;

~~(b) Participate in the design of the solicitation;~~

(b) Consult with the utility on preparation of the draft RFP and submit its assessment of the final draft RFP to the Commission when the utility files the final draft for approval;

(c) Evaluate the utility's overall evaluation process, including price and non-price scoring, and the ability of the evaluation process to assess the unique risks, burdens, and benefits of each bid;

(d) Provide to the ~~Company~~Commission 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; ~~and~~, including but not limited to:

(1) Terminal value methods and assumptions;

(2) Environmental emissions costs;

(3) Reasonableness of capital costs;

(4) Adequacy of capital additions costs;

(5) Reasonableness of all operation and maintenance costs;

(6) Reasonableness of performance assumptions for output, heat rate, and power curve (as applicable);

(7) Risk assessment of construction schedules or an assessment of risk associated with construction schedule delays;

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

(g) Independently score utility and utility affiliate bids as well as bids with ownership characteristics or options, if any, and all or a sample of the remaining bids.

Once the utility and the independent evaluator have both scored and evaluated the bids, the independent evaluator and utility must both file their scores with the Commission. The independent evaluator and utility must compare results and attempt to reconcile and resolve any scoring differences. If the utility and IE are unable to resolve scoring differences, the independent evaluator must explain the differences in its closing report to the Commission.

_(h) Prepare a final report to the commission after reconciling rankings with the utility in accordance with WAC 480-107-035(45)(f) that must:

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

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

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

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

WAC 480-107-035 Project ranking procedure.

(1) For all resource needs identified in IRP action plan that are Significant Energy Resources, ~~t~~The commission must approve the RFP procedures and criteria, and the utility ~~will use in its RFP~~must:

(a) prior to preparing a draft RFP, develop and file for approval in the utility's IE selection docket, a proposal and process for the evaluation and scoring of all bids;

(b) consider the use of a qualified and independent third-party expert to review site-specific resource performance factors

for wind and solar bids that have been selected to the initial shortlist;

(c) use a price evaluation criteria based upon the IRP modeling assumptions used to develop the IRP's action plan; and

(d) convert non-price factors to price factors where practicable. Non-price scoring criteria must be objective and reasonably subject to self-scoring analysis by bidders. Non-price score criteria that seek to identify minimum thresholds for a successful bid and that may readily be converted into minimum bidder requirements must be converted into minimum bidder requirements.

(2) The utility must base the evaluation and scoring of bids on price and non-price factors. The RFP must evaluate and rank project proposals. ~~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. The utility must use non-price scoring to consider the value of any additional net benefits, such as risks and benefits to vulnerable populations and highly impacted

communities that are not directly related to the specific resource identified in the IRP action plan.

~~(2)~~ At a minimum, the ranking criteria must recognize resource cost, market-volatility risks, demand-side resource uncertainties, resource dispatchability, resource effect on system operation, credit and financial risks to the utility, the risks imposed on ratepayers, public policies regarding resource preference and requirements adopted by Washington state or the federal government. The ranking criteria must recognize differences in relative amounts of risk and benefit inherent among different technologies, fuel sources, financing arrangements and ownership structures., ~~and contract provisions, including risks and benefits to vulnerable populations and highly impacted communities.~~

The ranking ~~criteria~~ must also be consistent with the ~~avoided cost~~ modeling 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 resource need requested identified in the IRP action 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 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 identifying specifics of a project, a generic but complete description is sufficient.~~

(5) Reserved.

(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~~forty 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~~ If a utility RFP concludes no bids received adequately serves ratepayers' interests, consistent with the IRP action plan, the commission will review, as appropriate, ~~at~~the utility's ~~finding~~ that no proposal adequately serves ratepayers' interests findings, together with and supported by evidence filed by any independent evaluator in support of any ~~acquisition~~ concurrent acquisitions, 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.

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.~~

(1) Reserved.

(2) All demand response measure project proposals must demonstrate customer benefits using the evaluation methodologies in WAC 480-107-035 (Project ranking procedure)

(3) A utility must acquire demand response resources through a competitive procurement process as described in this rule unless implementing a competitive procurement framework for demand response as approved by the commission.

(a) As part of that process, a utility may develop a competitive procurement framework for demand response resources in consultation with the commission.

(b) The competitive procurement framework for demand response resources must:

(i) Define the specific criteria that will be used to determine the frequency of competitively bidding demand response resources;

(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;

(c) The competitive procurement framework for demand response 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.

(4) A utility, a utility subsidiary, or affiliate may participate as a demand response bidder subject to the conditions described in WAC 480-107-135 (Conditions for purchase of resources from a utility, a utility's subsidiary, or affiliate).

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).~~

(1) Reserved.

(2) All conservation and efficiency measures ~~included in a~~ project proposals must ~~—~~ demonstrate customer benefits using the evaluation methodologies in WAC 480-107-035 (Project ranking procedure) ~~produce savings based on modeling inputs~~ 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) As part of that process, a utility may develop, and update each biennium, a competitive procurement framework for conservation and efficiency resources in consultation with its conservation advisory group, as described in WAC 480-109-110 (Conservation advisory group). The first competitive procurement framework for conservation and efficiency resources may be filed with the 2022-2024 biennial conservation plan.

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

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

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

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

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

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

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

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

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

(4) A utility, a utility subsidiary, or affiliate may participate as a conservation bidder subject to the conditions

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

WAC 480-107-075 Contract finalization.

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

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

(3) The utility may sign contracts for any appropriate period specified in a selected project proposal for up to ~~twenty~~thirty 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 rerank, and have the independent evaluator rerank when applicable,

projects according to the revised project proposal. If the material changes cause the revised project proposal to rank lower than projects not originally selected, the utility must instead pursue contract finalization with the next ranked project.

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.

(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.

(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~~ and its 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~~ to bid:

(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 a Significant Energy Resource in 480-107-135(1), the utility must submit its repowering project as a bid in the a generating resource 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 provide 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).

(4) Any utility employee who participates in the development of the RFP or the evaluation or scoring of bids on behalf of the utility may not participate in the preparation of a utility or affiliate bid and must be screened from that process.

(5) Prior to the opening and evaluating of third-party bids, the utility must file with the Commission and submit to the independent evaluator, for review and comment, a detailed score

for any utility and/or utility affiliate bid with supporting cost information, all transmission arrangements, and all other information necessary to score the utility and/or utility affiliate bid.

(6) If, during the course of the RFP process, the commission or the independent evaluator determines that it is appropriate to update any bids, the utility must also make the equivalent update to the score of the utility and utility affiliate bids.

(7) Before the independent evaluator provides the utility an opportunity to score other bids, the utility must file with the commission and submit via a method that protects confidentiality the following information:

(a) The final utility and utility affiliate resource score developed in consultation with the independent evaluator, and

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

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 in which the fully-developed project was reviewed for prudence, including any time period allowed for reconsideration or appeal, whichever is later.

(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:

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

(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. 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~~ For generating resources, average bidder percentage of women-, minority-, veteran- and disability owned businesses to be contracted in the construction and operating of the resources. For demand response and conservation and efficiency resources, the number of bids received by bidder type, including women-, minority-, disabled, ~~or~~, and veteran-owned businesses;

(i) Number of projects received, categorized by ownership structures, whether power purchase agreement or asset sale to the utility; and

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

WAC 480-107-BBB Protected Information.

(1) 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.