



Making the Most of Michigan's Energy Future

Competitive Procurement

Michigan Public Service Commission Staff Guidance Document

June 22, 2021

Case No. U-20852

Presented for consideration is the Competitive Procurement Staff Guidance Document resulting from the August 20, 2020 Commission Order in Case No. U-20852. Staff held five workgroup meetings starting on September 14, 2020 with the final meeting taking place on March 17, 2021. In addition, Staff released strawman guidance documents for stakeholder comment on October 1, 2020 and April 1, 2021. Comment summaries on the strawman guidance documents and links to meeting presentations can be found [here](#).



MPSC

Michigan Public Service Commission

Competitive Procurement Guidelines for Rate-Regulated Electric Utilities (Not for PURPA Compliance)

Definitions:

Competitive Procurement – A discretionary process in which the utility may solicit and ultimately contract for, own, or build any combination of energy, capacity, Renewable Energy Credits (REC), ancillary services for grid reliability, generating assets, storage assets, or other supply side resources through a Request for Proposal (RFP) process.

Independent Monitor (IM) – A non-affiliated, unbiased entity hired by the utility or Commission to work with the utility and help develop the competitive procurement process and to provide independent oversight of the procurement process to ensure that it is fairly designed and administered. This entity does not have final scoring authority of proposals resulting from an RFP but may help with scoring at the utility's discretion. The utility will maintain final selection of all proposals.

Independent Administrator (IA) - A non-affiliated, unbiased entity without a business interest in the solicitation or similar solicitations hired by the utility to work with the utility and administer the competitive procurement process. This entity will have final scoring responsibility for proposals resulting from an RFP and will communicate these results to the utility by redacting any of the bidder's identifying information until such time as the utility enters negotiations with the bidders. The utility will maintain final selection of all proposals.

Short-term Resource – An asset that has a useful life of less than 5 years from completed construction or contract date.

Long-term Resource - An asset that has a useful life of at least 5 years from completed construction or contract date.

Objective: This guidance document will be used by the Commission to ensure strong, ownership-neutral market response and value for customers through transparency, non-discriminatory access, certainty, and fairness in bidding processes. When utilized by utilities, it is presumed that resulting projects and contracts are reasonable and prudent. In the event utilities diverge from the guidance included in this document, it is expected the utility will provide sufficient justification in order to receive Commission approval and recovery. The guidance document is intended to provide utilities with clarity regarding Commission expectations and participants with confidence in the process. Thus, in considering the guidelines contained herein for competitive solicitations, the fundamental principle of minimizing customer costs and ensuring reasonable rates is paramount. This guidance will be utilized when the utility does not intend to use the competitive solicitation as the means for establishing its Public Utilities Regulatory Policies Act (PURPA) avoided costs or as a basis for determining an avoided capacity cost of zero outside the competitive solicitation process. This guidance allows for the continued refinement of bidding processes over time based on feedback from bidders, the Commission, the utility, and stakeholders.

Guiding Principles: When making determinations of the reasonableness and prudence of utility energy and capacity resource procurements, the following guidelines shall be used in the Commission's evaluation of the process and resulting bids. This includes resources procured for Voluntary Green

Pricing (VGP) Programs, Renewable Portfolio Standards, to inform Integrated Resource Plans (IRP) or as a result of IRPs, and other competitive procurement activities deemed appropriate and reasonable by the Commission.

These guidelines do not apply to energy waste reduction programs, demand-side tariff programs administered by utilities, short-term market purchases, or other tariff-based activities.

These guidelines are not intended to restrict the utility's ability to procure resources without use of competitive procurement process in certain situations, such as, but not limited to where authorized by law, or to obtain short-term energy or capacity related products from the RTOs.

Guidelines:

1. All long-term resources, including utility self-build projects, should be procured through competitive solicitations. Competitive procurement will be conducted in a manner which is technology neutral to the extent practical. Bidding processes may be tailored based on the specific energy or capacity resource needs as identified in an approved IRP, Renewable Energy Plan, or Voluntary Green Pricing program but should not be designed in a way that would exclude cost-competitive options or other projects not specifically identified in the in the above-mentioned proceedings.
2. Oversight and independence of bidding process:
 - a. If utility affiliates are responding to an RFP through submission of a bid, the utility and utility affiliate must use separate staffing. This includes a prohibition on information sharing between utility affiliates responding to the RFP and utility personnel involved in any aspect of the RFP process (such as preparation of RFP, scoring/evaluation of results, or contract negotiation).
 - b. There will be no information sharing between the utility development arm and the procurement arm when utility-owned projects are allowed to bid into a solicitation.
 - c. Use of an IA or IM:
 - i. It is preferred that an IA conducts all aspects of the competitive procurement process, including scoring of proposals, especially if a utility or its affiliate intends to bid a self-build project into the utility's competitive solicitation.
 - ii. If a utility does not use an IA, it should provide an explanation to Commission Staff (Staff) explaining the reasons that an IA was not used and ensure compliance with any applicable FERC guidelines.
 - iii. If the utility intends to conduct a competitive bidding process to set avoided costs under PURPA, an IA must be used as described in separate guidance issued for that process.
 - d. The utility shall coordinate with Staff and customer stakeholders in the development of the RFP prior to the pre-RFP meeting. The utility shall work with Staff and customer stakeholders in the development of the scoring sheet and allow for review of the process used to evaluate and select proposals leading up to or at the pre-RFP meeting. Staff shall have full access to all redacted information from the utility IA or IM. In addition, the utility shall make utility staff, the IA or IM, and all unredacted proposal and scoresheets available to Staff in order for Staff to conduct a review and audit of the

process prior to the Commission's decision on the application filed for approval of contracts.

- i. At least 30 days prior to issuance of an RFP, the utility will hold the pre-RFP meeting that includes Staff, potential bidders, and stakeholders. The purpose of this meeting is to describe and allow discussion related to the RFP, timeline, and process for the competitive solicitation.
 - ii. The utility shall release a draft RFP and solicitation documents at least 10 days prior to the pre-RFP meeting.
 - iii. At the pre-RFP meeting, the utility will describe the draft RFP and solicitation documents, including but not limited to:
 1. Minimum eligibility requirements for bidders and resources.
 2. An explanation of each non-price factor to be considered as well as its definition, criteria, value, score, quantification, relative importance, or weighting shall be provided.
 - iv. At the pre-RFP meeting, the utility will allow potential bidders, Staff, and stakeholders to ask questions of the utility, the IA or the IM, and provide comments or suggested edits to the solicitation documents. The utility should also allow written comments due no later than 10 days after the pre-RFP meeting. The utility will share these written comments with Staff.
 - v. The IA or IM will work with the utility to design the solicitation, administer bidding, and evaluate bids prior to the utility's selection. The utility will provide access to all information necessary for the IA or IM to effectively carry out its roles and responsibilities.
 3. Open, non-discriminatory treatment of long-term resources:
 - a. Utilities should conduct an open, non-discriminatory procurement process that fairly considers both third-party and utility ownership structures, resource types or combinations of resource types, sizes/capacities, ancillary services, and cost reducing grid benefits with transparency on how they will be evaluated.
 - b. Bidding is open to all long-term resources and solutions that can meet relevant system and program needs (e.g., fuel source, RECs, combinations of long-term resources, ancillary services, etc.).
 4. Minimum RFP requirements and specification of evaluation criteria:
 - a. Consistent with the timeline established for the pre-RFP meeting, minimum eligibility requirements for bidders and long-term resources will be identified prior to the release of the RFP, although these requirements should not result in discrimination against viable non-traditional or alternative providers utilizing emerging technologies.
 - b. Price factors, non-price factors, and category weighting to be used for project selection shall be identified clearly in the RFP, and if practical, the RFP should include scoring sheets with applicable weighting of evaluation factors. Price factors include energy, capacity, ancillary services, RECs or other market values not included in energy costs, and adjusted loss factors. Non-price factors may include consideration and incentivization of ancillary environmental and community benefits, brownfield redevelopment, pollinator habitat, local jobs, union labor, and other factors that provide benefit to the utility, ratepayers, or other citizens of Michigan. Non-price factors can be

quantified but any value given should be disclosed to the potential bidders at the pre-RFP meeting.

- i. Each non-price factor and its criteria, value, score, quantity, relative importance, or weighting should not drastically change between solicitations unless clearly identified at the pre-RFP meeting. Before bidding begins, the criteria must be clearly specified, defined, explained, justified, and supported so that respondents to an RFP may credibly assess project costs based on both price and non-price factors and evaluate non-price traits of various alternatives.
 - ii. Utilities are encouraged to include non-price factors in their competitive solicitations, even if the benefits of those non-price factors or long-term benefits accrue over time.
- c. For each proposed non-price factor, the utility must describe in detail how each non-price factor provides an observable or identifiable ratepayer benefit. In the absence of such description, the applicable non-price factor will not be used in evaluating and selecting competitive solicitation responses.
- d. Templates of Power Purchase Agreement (PPA) and Build Transfer Agreement (BTA) with terms and conditions and identification of what terms and conditions are non-negotiable. These templates should be drafted to ensure technology neutrality.
- e. If known, evaluation of bids should include consideration of transmission and distribution availability and constraints, including treatment of transmission congestion costs and inter-zonal pricing risk.
- f. If available, these data shall be provided to bidders in an accessible format and shall include detailed locational information. If known, evaluation of bids should include consideration of transmission and distribution benefits, including reductions in transmission congestion and loss costs, reduced distribution system losses, deferred or avoided transmission or distribution investments, and other locational benefits as applicable. If available, all transmission and distribution benefits must be shared with all parties as part of the solicitation documents. As applicable, identify the parameters for inclusion of a financial compensation mechanism, terminal value analysis, or any other adjustment factor for all projects. The utility shall not conduct a terminal value analysis if:
 1. A developer submits a bid with a PPA term equal to the presumed useful life the assets over which the utility amortizes its capital costs or the expected operational life (i.e., 35 years); or
 2. The guaranteed BTA cost recovery period is limited to the PPA term (i.e., 20 years); or
 3. A developer provides the utility the opportunity, at the developer's discretion, to purchase the project for a firm amount, which shall be a price that the developer reasonably believes, based on facts and circumstances at the time the price is determined, will at least be fair market value at exercise, provided that at the time of purchase, the firm amount is equal to or greater than the fair market value.
- ii. If a terminal value analysis is conducted, the terminal value for each bid will be calculated as the LCOE price of the project bid in the RFP.

- g. As applicable, assumptions for federal tax credit treatment for all projects. These assumptions are at the risk of the resource.
 - h. The RFP shall indicate the duration (years) over which the bid's price and applicable non-price factors will be evaluated. Allowable durations for bids for PPAs will include an option to bid a PPA lasting for the full evaluation period (for example, if projects are evaluated over 35 years, bidders could bid a 35-year PPA).
 - i. The RFP and template PPA shall not include terms and conditions which are commercially unreasonable, unusual in the industry, or would unreasonably favor any party including the utility or its affiliate(s).
- 5. Ensure the competitive bidding process aligns with resource planning and various project/contract approval processes, including requirements in MCL 460.6t(6) and MCL 460.6t(4) where applicable.
- 6. The competitive bidding process should be consistent, simple, and understandable for stakeholders and participants, executable, and technology neutral.

Competitive Procurement Guidelines for Rate-Regulated Electric Utilities for PURPA Avoided Cost and Capacity Determination

Definitions:

Competitive Procurement – A discretionary process in which the utility may solicit and ultimately contract for, own or build any combination of energy, capacity, Renewable Energy Credits (REC), ancillary services for grid reliability, generating assets or storage assets through a Request for Proposal (RFP) process.

Independent Administrator (IA) - A non-affiliated, unbiased entity without a business interest in the solicitation or similar solicitations hired by the utility to work with the utility and administer the competitive procurement process. This entity will have final scoring responsibility for proposals resulting from an RFP and will communicate these results to the utility by redacting any of the bidder's identifying information until such time as the utility enters negotiations with the bidders. The utility will maintain final selection of all proposals.

Short-term Resource – An asset that has a useful life of less than 5 years from completed construction or contract date.

Long-term Resource - An asset that has a useful life of at least 5 years from completed construction or contract date.

Objective: This guidance document will be used by the Commission to ensure strong, ownership-neutral market response and value for customers through transparency, non-discriminatory access, certainty, and fairness in bidding processes and value to customers. When utilized by utilities, it is presumed that resulting projects and contracts are reasonable and prudent. In the event utilities diverge from the guidance included in this document, it is expected the utility will provide sufficient justification in order to receive Commission approval and recovery. This guidance will be utilized when the utility intends to use competitive solicitation as the means for establishing its PURPA avoided costs and as a basis for determining an avoided capacity cost of zero outside the competitive solicitation process. This guidance document is intended to provide utilities with clarity regarding Commission expectations and participants with confidence in the process. This process conforms to the *Allegheny* Principles and will serve as the means for establishing the utility's PURPA avoided costs. These guidelines are similar to the Competitive Procurement Guidelines for Rate-Regulated Electric Utilities but require an IA to provide final scoring for proposals and require the utility to allow PURPA Qualifying Facility (QF) projects to bid into each solicitation. However, in the event that a competitive solicitation concludes with unfilled capacity, the utility must make this unfilled capacity available to PURPA QFs at the PURPA avoided cost established by the Commission based upon the competitive solicitation. This guidance allows for the continued refinement of bidding processes over time based on feedback from bidders, the Commission, the utility, and stakeholders.

If a QF is not selected under such a competitive solicitation, it is entitled to a PURPA avoided energy rate outside of the competitive solicitation and would receive the utility's most recently approved avoided energy cost payment.

Guiding Principles: When making determinations on the reasonableness and prudence of all utility energy resource arrangements, the following guidelines will be used in the Commission's evaluation of the process and resulting bids. This will include resources procured for Voluntary Green Pricing (VGP) Programs, for Renewable Portfolio Standards, to inform Integrated Resource Plans (IRP) or as a result of IRPs, and other competitive procurement activities deemed appropriate and reasonable by the Commission.

These guidelines do not apply to energy waste reduction programs, demand-side tariff programs administered by utilities, short-term market purchases or other tariff-based activities.

These guidelines are not intended to restrict the utility's ability to establish its PURPA avoided cost using methods other than Competitive Procurement.

Draft Guidelines

1. All long-term resources, including utility self-build projects, should be procured through competitive solicitations. Competitive procurement will be conducted in a manner which is technology neutral to the extent practical. Bidding processes may be tailored based on the specific energy or capacity resource needs as identified in an approved IRP, Renewable Energy Plan, or VGP program but should not be designed in a way that would exclude cost-competitive options or other projects not specifically identified in the in the above-mentioned proceedings.
2. Oversight and independence of bidding process:
 - a. If utility affiliates are responding to an RFP through submission of a bid, the utility and utility affiliate must use separate staffing. This includes a prohibition on information sharing between utility affiliates responding to the RFP and utility personnel involved in any aspect of the RFP process (such as preparation of RFP, scoring/evaluation of results, and contract negotiation).
 - b. There will be no information sharing between the utility development arm and the procurement arm when utility-owned projects are allowed to bid into a solicitation.
 - c. The utility must use an IA who is responsible for administering the competitive solicitation, including scoring or proposals. The IA must be an entity independent from the purchasing electric utility and must not have a business interest in the solicitation.
 - i. The IA is responsible for scoring of proposals and for providing blind rankings to the utility that could be considered for Commission review. The IA will work with the utility to design the solicitation, administer bidding, evaluate, and rank bids with all identifying information removed prior to the utility's final selection consistent with the oversight principles set out in Allegheny Energy Supply Co, LLC, 108 FERC 61082 (2004)).
 - d. The utility shall coordinate with Commission Staff (Staff) in the development of the RFP prior to the pre-RFP meeting. The utility shall work with Staff and customer stakeholders in the development of the scoring sheet and allow for review of the process used to evaluate and select proposals leading up to or at the pre-RFP meeting. Staff shall have full access to all redacted information from the utility's IA. In addition, the utility shall make utility staff, the IA, and all unredacted proposal and scoresheets available to Staff so that Staff may conduct a review and audit of the process prior to the Commission's decision on the application filed for approval of the contracts.

- i. At least 30 days prior to issuance of an RFP, the utility will hold the pre-RFP meeting that includes Staff, potential bidders, and stakeholders. The purpose of this meeting is to describe and allow discussion related to the RFP, timeline, and process for the competitive solicitation.
 - ii. The utility shall release a draft RFP and solicitation documents at least 10 days prior to the pre-RFP meeting.
 - iii. At the pre-RFP meeting, the IA will describe the draft RFP and solicitation documents, including but not limited to:
 1. Minimum eligibility requirements for bidders and resources.
 2. An explanation of each non-price factor to be considered as well as its definition, criteria, value, score, quantification, relative importance, or weighting shall be provided at the pre-RFP meeting.
 - iv. At the pre-RFP meeting, the IA shall allow potential bidders, Staff, and stakeholders to ask questions of the IA, and provide comments or suggested edits to the solicitation documents. The IA should also allow written comments due at no later than 10 days after the pre-RFP meeting. The IA will share these written comments with the utility and Staff.
 - v. The IA will arrange a post-RFP meeting with the utility and Staff in which the selection process is detailed. The utility shall provide access to all information for the IA to effectively carry out its roles and responsibilities.
 - vi. The IA shall provide the utility with sufficient information to conduct a thorough internal review without disclosing the bidder's identity.
 - vii. The IA shall provide scores for all subjective factors, such as the ability of the bidder to complete the project on time, financial health and credit worthiness of bidder, experience, etc.
 - viii. The IA shall produce a ranked list of bid projects, based on the RFP's evaluation factors, weighting, and scoring sheets, for review by the utility and the Staff.
 - ix. The utility shall arrange a post-RFP meeting with the IA and Staff in which the selection process is detailed.
 3. Open, non-discriminatory treatment of resources:
 - a. The IA, on behalf of the utility, should conduct an open, non-discriminatory procurement process that fairly considers both third-party and utility ownership structures, resource types or combinations of resource types, sizes/capacities, ancillary services, and grid benefits with transparency on how they will be evaluated.
 - b. Bidding is open to all resources and solutions that can meet relevant system and program needs (e.g., fuel source, dispatchability, RECs, combinations of resources, ancillary services, etc.).
 - c. PURPA QFs may bid into each solicitation. If not selected on its merits and the utility's capacity needs have been met through the competitive procurement process, the PURPA QF is eligible to enter into a contract at the utility's energy only avoided energy cost rate after completion of the competitive bidding process.
 4. Minimum RFP requirements and specification of evaluation criteria:

- a. Consistent with the timeline established for the pre-RFP meeting, minimum eligibility requirements for bidders and resources will be identified with or prior to the release of the RFP.
- b. Price factors, non-price factors, and category weighting to be used for project selection will be identified clearly in the RFP, and if practical, the RFP will include scoring sheets with applicable weighting of evaluation factors. Price factors include energy, capacity, ancillary services, RECs or other market values not included in energy costs, and adjusted loss factors. Non-price factors may include consideration and incentivization of ancillary environmental and community benefits, brownfield redevelopment, pollinator habitat, local jobs, union labor, and other factors that provide benefit to the utility, ratepayers, or other citizens of Michigan.
 - i. Each non-price factor and its criteria, value, score, quantity, relative importance, or weighting should not drastically change between solicitations unless clearly identified at the pre-RFP meeting. Before bidding begins, the criteria must be clearly specified, defined, explained, justified, and supported so that respondents to an RFP may credibly assess project costs based on both price and non-price factors and evaluate non-price traits of various alternatives.
- c. Templates of Power Purchase Agreement (PPA) and Build Transfer Agreement (BTA) with terms and conditions and identification of what terms and conditions are non-negotiable.
- d. If known, evaluation of bids should include consideration of transmission and distribution availability and constraints, including treatment of transmission congestion costs and inter-zonal pricing risk.
 - i. If available, these data shall be provided to bidders in an accessible format and shall include detailed locational information
- e. If known, evaluation of bids should include consideration of transmission and distribution benefits, including reductions in transmission congestion and loss costs, reduced distribution system losses, deferred or avoided transmission or distribution investments, and other locational benefits as applicable. If available, all transmission and distribution benefits must be shared with all parties as part of the solicitation documents.
- f. As applicable, identify the parameters for inclusion of a financial compensation mechanism, terminal value analysis or any other adjustment factor for all projects.
 - i. The utility shall not conduct a terminal value analysis if:
 - 1. A developer submits a bid with a PPA term equal to the presumed useful life of the assets over which the utility amortizes its capital costs or the expected operational life (i.e., 35 years); or
 - 2. The guaranteed BTA cost recovery period is limited to the PPA term (i.e., 20 years); or
 - 3. A developer provides the utility the opportunity, at the developer's discretion, to purchase the project for a firm amount, which shall be a price that the developer reasonably believes, based on facts and circumstances at the time the price is determined, will at least be fair

market value at exercise, provided that at the time of purchase, the firm amount is equal to or greater than the fair market value.

- ii. If a terminal value analysis is conducted, the terminal value for each bid will be calculated as the LCOE price of the project bid in the RFP.
 - g. As applicable, assumptions for federal tax credit treatment for all projects.
 - h. To the degree practical, the terms and conditions for PPA bids should mirror those for BTA contracts and should not include unequal reserve or other requirements.
 - i. The RFP shall indicate the duration (years) over which the bid's price and non-price factors will be evaluated. Allowable durations for bids for PPAs will include an option to bid a PPA lasting for the full evaluation period (for example, if projects are evaluated over 35 years, bidders could bid a 35-year PPA).
 - j. The RFP and template PPA shall not include terms and conditions which are commercially unreasonable, unusual in the industry, or would unreasonably favor the utility or its affiliate(s).
5. Ensure the competitive bidding process aligns with resource planning and various project/contract approval processes, including requirements in MCL 460.6t(6) and MCL 460.6t(4), where applicable.
 6. The competitive bidding process should be consistent, simple, and understandable for stakeholders and participants, executable, and technology neutral.