



DEPARTMENT OF JUSTICE
GENERAL COUNSEL DIVISION

October 21, 2005

VIA ELECTRONIC MAIL AND HAND DELIVERY

Attention: Filing Center
Public Utility Commission of Oregon
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Re: *In the Matter of an Investigation Regarding Competitive Bidding (UM 1182)*
PUC Docket No. UM 1182
DOJ File No. 330-050-GN0061-05

Enclosed are an original and five copies of Oregon Department of Energy's Reply Comments on Bidding Guidelines (UM 1182), with attachments and certificate of service in the above-captioned matter for filing with the PUC today.

Sincerely,

/s/ Janet L. Prewitt

Janet L. Prewitt
Assistant Attorney General
Natural Resources Section

Enclosures

c: UM 1182 Service list

JLP:jrs/GENO1994.DOC

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UM 1182

In the Matter of an Investigation
Regarding Competitive Bidding
(UM 1182)

OREGON DEPARTMENT OF ENERGY'S
REPLY COMMENTS ON BIDDING
GUIDELINES (UM 1182)

The Oregon Department of Energy (ODOE) submits the following reply comments on the Bidding Guidelines. ODOE's Proposed Changes to Staff's Straw proposal are attached.

TIMING AND TENURE

Referring to guideline number 1, the **timing** of resources has been a standard feature of Integrated (or least-cost) Resource Plans (IRPs) since 1989. **Tenure** (the duration of a resource contract or physical lifetime of the facility) has not received enough attention in most IRPs. Long-lived resources and contracts can provide some certainty about costs but can reduce a utility's flexibility. If load levels decline, capital-intensive long-lived resources or take-or-pay contracts are difficult to sell or transfer and can lead to rate increases, particularly if there is not enough transmission capacity to access wholesale markets.

DEFINITIONS OF RFP RESOURCES

Referring to guideline number 2, if a resource has a duration of more than 5 years, it is not a short-term purchase. It is a commitment that should be compared to other resource choices in the acknowledged IRP. Resources or purchases under 100 MW are relatively small and bidders might be deterred by an RFP process. However, if an RFP is issued, all resources over 10 MW should be allowed to bid, consistent with Order 05-584 which established that qualifying facilities under 10 MW nameplate are eligible for a standard contract and tariff under the federal Public Utility Regulatory Policy Act of 1978.

USE OF THE INDEPENDENT EVALUATOR (IE)

Referring to guideline number 7, the utility should participate in the selection of the IE but should not have the final say. Otherwise, the utility could select an IE known to tilt towards utilities. Also it might affect the IE's behavior during the RFP, based on an IE's hopes of obtaining future work with the utility.

There seems little benefit in collecting the cost of the IE from bidders. These costs are either a useful expenditure for customers or they are not. Adding them to the already high cost of preparing a bid might discourage bidder participation, particularly for small projects as is often the case with renewable resource and cogeneration projects. As the usefulness is likely less in the Standard RFP that does not consider affiliate bids or utility ownership options, the utility can judge whether a IE would be useful or not (see also proposed changes to guideline number 9).

TRANSMISSION ISSUES

The following comments refer to proposed changes to guidelines number 8a., 8b. 10. and 16. There is a well known "chicken and egg" problem with developing transmission and renewable generation. Transmission has long lead times, comes in lumpy increments of hundreds and even thousands of MW of transfer capacity and is subject to loop flow and other physical complexities that are managed by equally complex set of commercial arrangements and reliability requirements. Relative to transmission, generating resources, particularly renewable resources, can have short lead times, can come in increments under a hundred MW and might be best developed by independent power providers. It would be simpler for utilities if bidders to an RFP had acquired the necessary transmission rights for their projects. However, for all but the largest renewable projects, this is impractical.

Instead, the transmission integration process should parallel both the IRP process and the roughly 18 month process from RFP issuance to Commission acknowledgement of the final short-list of resource amounts. In the IRP, utilities should examine long-term transmission

arrangements as a hedge against load-resource imbalances. Developers should be allowed to use the utility's planned transmission projects and surplus transmission rights in their bids.

Otherwise, the RFP process will be biased toward utility-owned resources.

Utilities should participate in sub-regional transmission planning processes (e.g. by the Northwest Transmission Assessment Committee) before and after IRP acknowledgement. Planning options from these processes should be used as a tool to evaluate the transmission costs of bids.

To compare bids from the RFP will require estimates of transmission costs. Bidders should submit bids for delivery at the bidder's bus bar. Developers should be allowed to acquire their own transmission and also bid a delivered price. Whether a delivered price is offered or not, the utility should make an initial transmission cost estimate. The lower of the bidder's implied transmission cost (i.e. the difference between the undelivered and delivered prices) and the utility's estimate of providing transmission should be used for the selection of the initial short-list of bids.

Once the initial short-list is selected, the utility should prepare a integrated transmission splan for several combinations of short-edbidslist . The utility would then know the transmission, integration and bus bar costs and could pick the combination of bids that minimizes the desired combination of expected costs and risks. If both bus bar and delivered costs are included in the bid, and if the utility can integrate a resource at a lower cost, it should seek agreement with the bidder on using the utility's transmission option. The bidder will likely agree.

As with the final contracts with bidders, normally transmission contracts would not be signed until after the final resource list and transmission plan or plans are acknowledged. The utility should not commit to transmission upgrades or sign firm long-term transmission contracts until all or almost all contracts with bidders have been signed.

It is impossible to exactly match power and transmission capacity for every dispatch condition in every year. Hourly dispatch decisions are too variable and transmission investments are too lumpy for that. Some surplus transmission capacity is necessary for contingences and to access opportunities to sell and buy wholesale power. Inclusion of transmission in the RFP process should enhance the ability of the utility to plan other transmission upgrades that are not associated with specific generating resources by explicitly modeling generation additions from the bids in transmission studies. The cost of these studies would be paid for by the power (merchant) side of the company.

Transmission planning should be discussed in the RFP acknowledgement process. Compared to the current process, including transmission planning functions within the RFP acknowledgement process will lower costs and risks to utility customers and shareholders.

SHORT-LIST SELECTION AND DEFINITION

Referring again to guidelines 8a. and 8b., ODOE sees only one distinction between OPUC Staff's position and the position of the Public Interest Groups: Under the OPUC Staff position there might be more than 5 initial short-listed bids for resource types that score high in the initial screening. Under both proposals sufficient amounts of acknowledged IRP resources with low scores would be on the initial short-list. ODOE is neutral on the amounts of high-ranking resource types on the initial short-list as long as there are sufficient numbers of bids for the various resources types and tenures that provide risk reduction benefits. However, if there are too many short-listed bids of the high-ranking resource type that are close in cost, it may unnecessarily complicate the transmission process outlined above. Utilities should have flexibility to limit their analysis under guideline 8b. by limiting the number of similar high-ranking bids on the initial short-list. For example, in developing the initial short-list of bids, if the amounts of sbid of a higher-ranking resource type exceeded the desired level, then the utility would still select bids of a lower-ranking type and not include some bids of the higher-ranking but over-represented type. In choosing among the bids of the higher-ranking resource type,

Referring to guidelines 9b. and 13c., if an IE is hired, the utility and the customers should make full use of the IE's expertise. The IE chosen should have experience drafting and implementing RFPs. In some cases IE may have broader experience than the utility. This expertise should be fully used. The Commission has final say over the RFP approval and acknowledgement of the final resource amounts. It should be able to access the IE's expertise where the IE and the utility differ.

DATED this _____ day of October 2005.

Respectfully submitted,

HARDY MYERS
Attorney General

/s/ Janet L. Prewitt

Janet L. Prewitt, #85307
Assistant Attorney General
Of Attorneys for Oregon
Department of Energy

CERTIFICATE OF SERVICE

I certify that on October 21, 2005, I served the foregoing OREGON DEPARTMENT OF ENERGY'S REPLY COMMENTS ON BIDDING GUIDELINES (UM 1182) upon the parties hereto by sending a true, exact and full copy by regular mail, postage prepaid, or by hand delivery or shuttle mail, and by electronic mail to:

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Dated: October 21, 2005

/s/ Janet L. Prewitt

Janet L. Prewitt, #85307

Assistant Attorney General

STAFF Straw Proposal
ODOE Proposed Changes
Oct. 21, 2005
Docket No. UM 1182
Competitive Bidding Investigation
September 26, 2005

1. **RFP after IRP:** The RFP process should follow the IRP process. If the utility's IRP shows new resources are needed, then the utility's IRP Action Plan should identify the preferred resource strategy, specifically describing the types of technologies, and the timing and tenure and other characteristics of each new resource in the utility's preferred resource portfolio. For each of the resources identified in its IRP Action Plan, the utility should indicate if it plans to consider a utility-owned resource. If the utility plans to consider a utility-owned site it should identify the transmission arrangements.

2. **RFP Requirement:** Utilities must issue RFPs for all Major Resource acquisitions. Major Resources are resources with durations greater than 5 years and quantities greater than 50100 MW. If an RFP is issued, all resources of 10 MW or more should be allowed to bid.

3. **Exceptions to RFP Requirement:** The RFP requirement does not apply to Major Resource acquisitions, other than self-build resources, in emergencies or in situations where there is a time-limited resource opportunity of unique value to customers. If a utility acquires a Major Resource under such conditions, it shall report the acquisition and the reason for acting outside of the RFP requirement to the Commission, within 30 days of the acquisition. Copies of the report will be served on all participants in the utility's most recent RFP and IRP processes as well as on parties to its most recent rate case.

4. **Waiver of RFP Requirement:** A utility may request Commission acknowledgment of an alternative acquisition method for a Major Resource in the utility's IRP. A utility may also request a waiver outside the IRP process. Such request will be served on all participants in the utility's most recent RFP and IRP processes, as well as on parties to its most recent general rate case. The Commission will issue an Order addressing such requests within 120 days, taking such oral and written comments as it finds appropriate under the circumstances.

5. **Affiliate Bidding:** Utilities may allow affiliates to submit RFP bids. If the utility allows affiliate bidding, then an Independent Evaluator must participate in the Non-Standard RFP. The utility must blind all RFP bids and treat affiliate bids the same as all other bids.

6. Utility Ownership Options: Utilities may use a self-build option as a Benchmark Resource in an RFP to provide a cost-based alternative for customers. Utilities may also consider ownership transfers within an RFP solicitation. If the utility intends to consider ownership options in an RFP, then an Independent Evaluator must participate in the Non-Standard RFP.

7. Independent Evaluator (IE): The ~~utility and~~ Commission staff, in consultation with the utility, selects an IE from a qualified slate of candidates. The IE should not be providing, or recently have provided, consulting services to market participants in western energy markets. The IE should report to the Commission staff. The IE should be paid by the utility and the costs should be eligible for recovery through rates. ~~through assessments of all bidders including the utility. The bidding fees will be based on the anticipated costs of the IE's services as established between the IE and the Commission staff. Even though an IE is not required for a Standard RFP, the costs should be eligible for rate recovery.~~

8. Bid Scoring and Evaluation Criteria:

- a. Selection of an initial short-list of bids should be based on price and non-price factors. The utility should use the initial prices submitted by the bidders to determine each bid's price score. The price score should be calculated as the ratio of the bid's projected total cost per megawatt-hour to forward market prices using real-levelized or annuity methods including differences in transmission costs with adjustments for generation integration costs (e.g. regulating reserves, etc). The non-price score should be based on resource characteristics identified in the utility's IRP Action Plan (e.g., ~~dispatch flexibility,~~ resource ~~term tenure,~~ flexibility portfolio diversity, etc.) and conformance to the standard form contracts attached to the RFP. Sufficient amounts of all resource types and tenures in the acknowledged IRP should be selected to accomplish the diversity and risk reduction goals in the IRP.
- b. Selection of the final short-list of resource amounts bids for final negotiations should be made on a system basis using the utility's production cost and risk models to identify the best combination of expected least-cost and, least-risk combination of resources. This should include a transmission plan to integrate the preferred short-listed bids, or alternative plans to integrate sets of preferred bids that meet the final resource amounts. If negotiations are unsuccessful with the preferred bids, the utility should negotiate with less preferred bids and adjust its transmission plan accordingly. The portfolio modeling and decision criteria used to select the final short-list of resource amounts bids must be consistent with the modeling and decision criteria used to develop the utility's IRP Action Plan. If an IE is used,

then the IE will have full access to the utility's production cost and risk models.

- c. Consideration of ratings agency debt imputation should be reserved for the selection of the list of preferred final bids from the initial short-list of bids, and only if this criteria is acknowledged in the IRP. The Utility should be willing to obtain an advisory opinion from a ratings agency to substantiate its analysis and final decision, if requested by the Commission.

9. RFP Design:

- a. Standard RFP: The utility designs and conducts a "Standard RFP" if it will not consider affiliate bids or ownership options in the RFP. The utility may use an Independent Evaluator, but is not required to do so.
- b. Non-Standard RFP: If the utility intends to consider self-build, affiliate, or ownership options in the RFP it must conduct a "Non-Standard RFP" and use an Independent Evaluator.
- c. Public Process Regarding RFP Design: Not less than 60 days before the utility intends to conduct a Standard or Non-Standard RFP, the utility should announce its intention to conduct an RFP. The utility and the IE, if used, should jointly draft ~~the a "Standard RFP" proposal,~~ including the scoring and bid evaluation criteria. If the IE and the utility cannot resolve differences, both RFPs should be submitted for Commission approval. If a utility self-build, affiliate, or ownership option is considered, the utility and the IE together should draft a "Non-Standard RFP." The utility and the IE, as needed, may conduct workshops on the upcoming RFP ~~and will submit its final proposed RFP,~~ including bid evaluation and scoring criteria and standard form contracts, to the Commission for approval, as described in paragraph 11 below.

10. Minimum Bidder Requirements: The utility may propose minimum bidder requirements for credit and capability. Bids cannot be excluded because of lack of transmission. In any case, the utility should independently estimate transmission costs for the bid and for combinations of preferred bids. If a Non-Standard RFP is used, then tThe IE, if used, should assist in the development of any minimum bidder requirements. Minimum bidder requirements will be subject to public comment during the design of the RFP and to Commission approval of the proposed RFP as described in paragraph 11 below.

11. RFP Approval: The Commission should solicit public comment on the utility's draft RFP, including the proposed minimum bidder requirements and bid scoring and evaluation criteria. Public comment should focus on: (1) the alignment of the utility's draft RFP with the utility's IRP; (2) whether the draft RFP

satisfies the Commission's competitive bidding guidelines; and (3) the overall fairness of the proposed RFP process. After reviewing the draft RFP and the public comments the Commission may approve the RFP with any conditions and modifications deemed necessary. The Commission should consider the impact of multi-state regulation including requirements imposed by other states for the RFP process, such as the timing of the process and the selection and use of an IE. The Commission should act on the proposed RFP within a reasonable time, but no later than 45 days following the filing of the final proposed RFP, unless the utility requests additional time.

12. Benchmark Score: If a utility owns a site that it intends to use as a Benchmark Resource in a Non-Standard RFP, the utility must submit a detailed Benchmark Score, with supporting cost information, to the Commission and IE prior to the opening of bidding. In these guidelines the term "bids" includes the Benchmark Resource. The Benchmark Score should be assigned to the Benchmark Resource using the same bid scoring and evaluation criteria that will be used to score market bids. Information provided to the Commission and IE must include any transmission arrangements and all other information necessary to score the Benchmark Resource. If, during the course of the RFP process, the utility and IE determine that bidder updates are appropriate, the utility will also update the costs of the Benchmark Resource. The IE will review the reasonableness of the cost update and the revised Benchmark Score. The information provided to the Commission and IE will be sealed and held until the bidding in the RFP has concluded.

13. RFP Process/ Analysis:

~~a. Standard RFP: The utility conducts the RFP process, scores the bids, selects the initial and final short-lists, and undertakes negotiations with bidders.~~

b. Non-Standard RFP:

i.a. The utility conducts the RFP process, scores the bids, selects the initial and final short-lists, and undertakes negotiations with bidders.

ii.b. The IE (if used) validates the utility's Benchmark Score and may validate, sample, or independently score all bids, at the discretion of the IE and the Commission. In addition, the IE evaluates the unique risks and advantages associated with the Benchmark Resource, including the regulatory treatment of construction cost overruns, equipment failures and outages, costs of replacement capacity, energy and ancillary services, and other risks and advantages of the Benchmark Resource to consumers.

iii.c. Once the competing bids and Benchmark Resource have been scored and evaluated by the utility and the IE, the two should compare results. The utility and IE should work to reconcile ~~and resolve any~~

scoring differences. If there are still differences, they should be made public.

14. IE Closing Report: The IE will prepare a Closing Report for the Commission once it has completed its involvement in the RFP process. In addition, the IE will make its detailed bid scoring and evaluation results available to the utility, Commission staff, and non-bidding consumer advocates.

15. Confidential Treatment of Bid and Score Information: Bidding information, including the utility's cost support for its Benchmark Resource, as well as any detailed bid scoring and evaluation results will be made available to the utility, Commission staff, and non-bidding intervenors under protective orders that limit use of the information to ~~RFP~~ acknowledgment of the final short-list of resource amounts or cost-recovery proceedings in which the RFP resources are at issue.

16. RFP Acknowledgment: The utility may request that the Commission acknowledge the utility's selection of the final short-list of RFP resources amounts and the associated transmission plan or plans. The IE will participate in any RFP acknowledgment proceeding. RFP acknowledgment should have the same legal force and effect as IRP acknowledgment in any future cost-recovery proceeding in which the selected resources are at issue. Acknowledgment shall have the same meaning as assigned to that term in OPUC Order No. 89-507.