

# \Competitive Procurement Guidelines for Rate-Regulated Electric Utilities

## Definitions:

Competitive Procurement – A process in which the utility ~~may~~ solicits and ultimately contracts for, owns or builds any combination of energy, capacity, Renewable Energy Credits (REC), ancillary services ~~for grid reliability, generating assets, or 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, ~~review, and/or provide oversight of 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 ~~necessarily~~ 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 hired by the utility ~~without a business interest in the outcome of the solicitation or similar solicitations~~ hired by the utility to work with the utility and ~~administer~~ help develop the Competitive Procurement process. This entity will have final ~~evaluation and~~ scoring responsibility for proposals resulting from an RFP and will communicate these results to the utility by redacting any of the ~~respondent's bidder's~~ identifying information until such time ~~as~~ the utility enters negotiations with the ~~respondent's bidder's~~. ~~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.~~

**Background:** In 2019, the Commission launched the MI Power Grid initiative to maximize the benefits of the transition to clean distributed energy resources for Michigan residents and businesses. Competitive procurement fell under the integrating emerging technologies area of focus through that initiative. In an August 20, 2020, Order in Case No. U-20852, the Commission directed Commission Staff (Staff) to convene a competitive bidding collaborative with the objective of developing guidelines that ensure strong, technology-neutral market response and value to ratepayers, through transparent, non-discriminatory access, certainty and fairness in bidding processes. Through the workgroup process and several rounds of comments, the Commission ultimately adopted the competitive procurement guidelines in its September 9, 2021, Order in Case No. U-20852. In this same Order, the Commission stated that Staff shall issue a survey to rate-regulated utilities, developers, and stakeholders to obtain feedback regarding the performance of the competitive procurement guidelines and any suggested improvements or modifications no later than September 9, 2026. This document will serve as the starting point for improvements, modifications and updates.

**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 that also provides participants with confidence in the process. ~~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 respondents with confidence in the process. Thus, in considering the guidelines contained herein for competitive solicitations, the fundamental principles of minimizing customer costs, maximizing customer value, and ensuring reasonable rates are paramount. This guidance will be utilized when the utility does not intend to use the competitive solicitation as the means for establishing its Public Utility Regulatory Policies Act of 1978 (PURPA) avoided costs or as a basis for determining an avoided capacity cost of zero outside the competitive solicitation process.~~ ~~intends to use competitive solicitation as the means for resource procurement. If the utility intends to allow PURPA Qualifying Facility (QF) projects to bid into a solicitation, see the “PURPA Applicability” section below. These guidelines also allows for the continued refinement of bidding processes over time based on feedback from respondent’s bidder’s, the Commission, the utility, and stakeholders.~~

**PURPA Applicability:** This process conforms to the ~~principles set out in Allegheny Energy Supply Co, LLC, 108 FERC 61082 (2004) 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.~~ ~~Should a utility allow PURPA QF projects to bid into a solicitation, the utility must use an IA in accordance with FERC Order 872. However, in the event a Competitive Procurement solicitation concludes with unfilled capacity and the utility has unfilled capacity pursuant to the utility’s most recently approved IRP, the utility must may make this unfilled capacity available to PURPA QFs at the approved PURPA avoided cost established by the Commission based upon the Competitive Procurement.~~ This guidance should allow for the continued refinement of bidding processes over time based on feedback from bidders, the Commission, 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~~ a capacity rate of zero.

**Guiding Principles:** When making determinations of the reasonableness and prudence of all utility energy and capacity resource arrangements and procurements, the following guidelines will be used in the Commission’s ~~review evaluation~~ of the ~~Competitive Procurement processes~~ and resulting bids. This ~~will includes~~ resources ~~procured through a Competitive Procurement process necessary~~ for Voluntary Green Pricing (VGP) Programs, Renewable Portfolio Standards, to inform Integrated Resource Plans (IRPs) or as a result of IRPs, ~~Clean Portfolio Standards, Energy Storage Targets~~ and other competitive procurement activities deemed ~~appropriate and reasonable~~ by the Commission.

These guidelines do not apply to energy waste reduction, **other** demand-side tariff programs administered by utilities; **or** 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 the 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.~~

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

### Guidelines:

1. All ~~Long-term R~~resources, including utility self-build projects, ~~should be procured are~~ **arranged** through ~~C~~competitive ~~P~~procurement. ~~Competitive Procurement will be conducted in a manner which is technology neutral to the extent practical. Competitive Procurement Bidding~~ processes may be tailored based on the specific energy, ~~or~~ capacity resource, **renewable portfolio or clean energy portfolio** needs as identified in ~~an approved the~~ **IRP; Renewable Energy Plan, or VGP program or other planning process**, but should not be designed in a way that would exclude cost-competitive options or other projects not specifically identified in the ~~above-mentioned proceedings~~ **IRP or other planning process**. **And should appropriately value resources that are already constructed but not under contract as compared to resources that require new construction.**
2. Oversight and ~~i~~ndependence of the ~~Competitive Procurement bidding P~~process:
  - a. ~~If utility affiliates are responding to an RFP through submission of a bid, the utility and utility affiliate must use s~~Separate staffing ~~This includes a prohibition on and~~ information sharing between utility **personnel or utility** affiliates ~~s~~ responding to ~~the~~ **RFP (submitting bids)** and utility personnel involved in any aspect of the RFP process (~~such as design and~~ preparation of ~~the~~ RFP, scoring/evaluation of results, ~~or 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. ~~Use of an IA or IM:~~
    - i. It is preferred that **there is use of** an IA that conducts all aspects of the ~~C~~competitive ~~P~~procurement process, including the scoring of proposals, especially if a utility ~~or its affiliate~~ intends to bid a self-build project into the utility's competitive solicitation. **If a utility allows PURPA QF projects to bid into a solicitation, the use of an IA is required in accordance with FERC Order 872.**
    - ii. ~~If a utility does not use an IA, it should provide an explanation to Commission Staff (Staff) explaining the reasons for an IA not being used and how compliance with any applicable FERC guidelines was ensured.~~
    - iii. ~~If the utility intends to conduct a Competitive Procurement 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~~**will** coordinate with Staff ~~and customer stakeholders~~ in the development of the RFP prior to the pre-RFP meeting. The utility ~~shall~~**will** work with

Staff ~~and customer stakeholders~~ in the development of the scoring sheet and allow for review of the ~~scoring criteria and 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 will~~ make utility staff, the IA or IM, and all unredacted proposals and scoresheets available to Staff ~~in order for Staff to~~ so that it may conduct a review and audit of the process prior to the Commission's decision on the application filed for approval of contracts.

- i. The utility ~~shall will~~ release a draft RFP and solicitation documents at least 10 days prior to the pre-RFP meeting.
- ii. At least 30 days prior to issuance of an RFP the utility will ~~hold host the a~~ pre-RFP meeting ~~that includes with~~ Staff, ~~potential respondents, and stakeholders.~~ and potential bidders to lay out the timeline associated with each solicitation. The utility will present draft solicitation documents (including an explanation of each non-price factor to be considered as well as its definition, criteria, value, score, quantification, relative importance, or weighting). The utility will allow potential bidders and Staff to ask questions of the utility, provide comments or suggested edits to the solicitation documents and take written comments due at no later than 10 days after the pre-RFP meeting. The utility will share these comments with Staff.
- 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 respondents 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~~
- iv. ~~At the pre-RFP meeting, the utility will allow potential respondents, 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 utility will arrange a post-RFP meeting with the IA or IM in which the selection process is detailed.
- vi. If the utility does use an IM, ~~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.
- vii. If the utility allows PURPA QF projects to bid into a solicitation, the following also applies:
  1. The IA shall score the proposals and provide recommendations that could be considered for Commission review. The IA will work with the utility to design the solicitation, administer bidding, and evaluate bids prior to the utility's selection consistent with the oversight

principles set out in *Allegheny Energy Supply Co, LLC*, 108 FERC 61082 (2004)).

2. The utility will provide access to all information for the IA to effectively carry out its roles and responsibilities.
  3. The IA will remove from the bid-data provided to the utility any non-essential information which might reveal the identity of the bidder.
  4. The IA will provide the utility with sufficient information to conduct a thorough internal review without disclosing the bidder's identity.
  5. The IA will 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 will 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.
3. Open, Non-discriminatory Treatment of Long-term Resources:
    - a. Utilities should conduct an open, non-discriminatory competitive procurement process that fairly considers ~~both third-party and utility~~ different ownership structures, applicable resource types or combinations of resource types, sizes/capacities including interconnection levels, ancillary services, and ~~cost reducing~~ grid benefits with transparency on how they will be evaluated. In doing so, the utility may consider any additional benefits that may not be reflected in project pricing but shall make these considerations clear in the solicitation documents released to bidders.
    - b. To facilitate bidding and comparison of multiple resource types, utilities are encouraged to specify the energy characteristics that are necessary to provide reliable resource supply needed to meet utility load and any specific resources necessary to ensure bids meet any applicable Michigan renewable and clean standards and storage targets contained in PA 235 of 2023 as well as reliability and resilience that are sought by the solicitation.
    - c. Bidding is open to all ~~Long-term applicable~~ 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 ~~respondents bidders~~ and ~~Long-term~~ Resources will be identified with or prior to the release of the RFP, ~~although these requirements should not result in discrimination against viable non-traditional or alternative providers or proposals utilizing emerging technologies.~~
    - b. Price factors, and non-price factors, and ~~category~~ weighting to be used for project selection ~~shall~~ will be identified clearly in with or prior to the release of the RFP, ~~and if practical, the~~ (RFP ~~should~~ to 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, land usage and overall footprint, facilities that provide a quantifiable public or environmental service, dispatchability as a clean or renewable resource, and other factors that provide benefits to the utility, ratepayers, or other citizens of Michigan. However, non-price factors ~~can be quantified but any value should be disclosed to the potential respondents at the pre-RFP meeting.~~ should not unduly bias the RFP against existing resources that are not under contract and should consider the benefit of utilizing resources that do not have the risk of implementation that may exist with the construction of new resources.

- i. Each non-price factor and its criteria, value, score, quantity, relative importance, or weighting should ~~not drastically change~~ be standardized, justified, and determined 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 Procurements, 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 nonprice 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 Procurement responses.~~
- d. Templates of Power Purchase Agreements (PPAs), Build Transfer Agreements (BTAs), or any other contractual types arrangement with terms and conditions and identification of what terms and conditions that are non-negotiable. ~~These templates should be drafted to ensure technology neutrality.~~
- e. If known, consideration of risk associated with siting, interconnection delays, and cost risks due to market volatility of commodities needed to construct the project.
- f. If known, consideration of transmission and distribution availability and constraints, including treatment of transmission congestion costs and inter-zonal pricing risk.
- g. ~~If available, these data shall be provided to respondents in an accessible format and shall include detailed locational information. If known, evaluation of bids should include~~ consideration of operational limitations or benefits associated with the transmission or distribution interconnection type, 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, existing resource interconnection, 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.~~
- h. Provide reasonable consideration of technology benefits that may include resources with long duration resiliency benefits, localized low-income county

economic benefits, dispatchability as a clean or renewable resource, existing construction thereby minimizing land development, resource diversity, or other quantifiable benefits.

- i. As applicable, ~~the utility shall~~ 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: If a terminal value analysis is conducted, the terminal value for each bid will be calculated as the levelized cost of energy price of the project bid in the RFP~~ it must meet one the following requirements:
  - i. ~~A respondent submits a bid with a~~ PPA term is equal to the presumed useful life the assets over which the utility amortizes its capital costs (i.e., 35 years); or
  - ii. PPA contracts include the option, at the mutual agreement of both parties, to extend the initial PPA term (i.e., 20 years) for an additional term (i.e., 15 years); or
  - iii. The guaranteed BTA cost recovery period is limited to the PPA term (i.e., 20 years); or
  - iv. ~~A respondent provides the utility the opportunity, at the respondent's discretion, to purchase the project for a firm amount, which shall be a price that the respondent 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. At the option of the seller, the utility can acquire the PPA asset at the end of the initial PPA term for the fair market value. The utility may request Commission approval for cost recovery in a future contested case.~~
  - v. Other options identified in a pre-RFP conference.
- j. As applicable, assumptions for tariff risks, state and federal tax credits, or other incentives for all projects. ~~These assumptions are at the risk of the resource:~~
- k. To the extent practical, the terms and conditions for PPA bids should mirror those for BTA contracts or other contractual arrangements and should not include unequal reserve or other requirements.
- l. To the extent that the RFP bidder is constructing a new resource, a commitment by the RFP bidder to comply with the Michigan Labor Standards as directed by Public Act 231 of 2023 and Public Act 10 of 2023 including a commitment to comply with the law and file the final executed labor agreements applicable to the project prior to project construction in the docket approving the project if the project is selected and contracted. This commitment should be included in contract language upon the project contract execution.
- m. The RFP ~~shall~~ will 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).

- n. The RFP and template PPA ~~shall~~ will not include terms and conditions which are ~~commercially~~ unreasonable, unusual in the industry, or would unreasonably favor the utility or its affiliate(s).
5. Code of conduct compliance:
- a. All code of conduct rules shall be followed. Utility shall document compliance with the Code of Conduct for any award to an affiliate and shall include such documentation when it files for approval.
  - b. RFP clearing price shall be used to determine “market price” in affiliate transactions for resource supply pursuant to MPSC code of conduct rules.
  - c. The utility shall utilize an IA when there are affiliate transactions, or if the utility allows PURPA QF projects to bid into a solicitation, per FERC guidelines.
6. Ensure the ~~C~~competitive ~~Procurement~~ bidding process ~~shall~~ aligns with resource planning and various project/contract approval processes, including requirements in MCL 460.6t(6). ~~and MCL 460.6t(4), where applicable.~~
- ~~7.—The Competitive Procurement should be consistent, simple, and understandable for stakeholders and participants, executable, and technology neutral.~~