

June 1, 2017

VIA ELECTRONIC FILING

Public Utility Commission of Oregon
201 High Street SE, Suite 100
Salem, OR 97301-3398

Attn: Filing Center

RE: UM ____—PacifiCorp's Application for Approval of 2017R Request for Proposals

PacifiCorp d/b/a Pacific Power submits for filing with the Public Utility Commission of Oregon (Commission) an application requesting the Commission open a docket for approval of a solicitation process for new wind resources and appoint an independent evaluator to oversee the request for proposal process.

PacifiCorp respectfully requests that all communications related to this filing be addressed to:

Oregon Dockets
PacifiCorp
825 NE Multnomah Street, Suite 2000
Portland, OR 97232
oregondockets@pacificorp.com

Erin Apperson
Attorney
825 NE Multnomah Street, Suite 1800
Portland, OR 97232
Erin.apperson@pacificorp.com


In addition, PacifiCorp respectfully requests that all data requests in this docket be addressed to:

By e-mail (preferred): datarequest@pacificorp.com

By regular mail: Data Request Response Center
PacifiCorp
825 NE Multnomah Street, Suite 2000
Portland, Oregon 97232

Informal questions concerning this filing may be directed to Natasha Siores at (503) 813-6583.

Sincerely,


Etta Lockey
Vice President, Regulation

Enclosure

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM _____

In the Matter of

PACIFICORP d/b/a PACIFIC POWER

Application for Approval of 2017R Request for Proposals.

APPLICATION

I. INTRODUCTION

In accordance with the competitive bidding guidelines (Guidelines) adopted by the Public Utility Commission of Oregon (Commission),¹ PacifiCorp d/b/a Pacific Power requests an order: (1) opening a docket for approval of PacifiCorp’s 2017R Request for Proposals (RFP), which is a solicitation process for up to approximately 1,270 MW of new wind resources capable of interconnecting to, and/or delivering energy and capacity across, PacifiCorp’s transmission system in Wyoming; and (2) appointing an independent evaluator (IE) to oversee the RFP process.

The 2017R RFP is designed to capture a time-limited resource opportunity arising from the expiration of federal production tax credits (PTCs). The proposed wind resources will be procured in conjunction with a new 140-mile, 500 kV transmission line and associated infrastructure running from the new Aeolus substation near Medicine Bow, Wyoming, to a new annex substation, Bridger/Anticline, which will be located near the existing Jim Bridger substation (transmission project). The transmission project is necessary

¹ *In the Matter of the Public Utility Commission of Oregon, Investigation Regarding Competitive Bidding*, Docket No. UM 1182, Order No. 14-149, Appendix A (Apr. 30, 2014).

to relieve existing congestion and will enable interconnection and integration of the proposed wind resources into PacifiCorp's transmission system. The proposed wind projects net of PTC benefits, when combined with the transmission project, are expected to provide economic benefits for PacifiCorp's customers. With aligned implementation schedules, the wind resources and transmission project must achieve commercial operation by the end of 2020 to qualify for the full value of PTCs. To complete construction of the new wind and transmission facilities by December 31, 2020, PacifiCorp plans to file a certificate for public convenience and necessity (CPCN) application with the Wyoming Public Service Commission in June 2017. Because the customer benefits associated with this opportunity are dependent upon the proposed wind resources and the new transmission project, PacifiCorp needs to establish a final shortlist from the 2017R RFP in early January 2018 to inform the Wyoming CPCN proceeding. PacifiCorp plans to seek acknowledgement of its 2017R RFP final shortlist, targeting Commission acknowledgement by March 2018.

PacifiCorp filed its 2017 integrated resource plan (IRP) with the Commission on April 4, 2017, in docket LC 67. Commission action on the 2017 IRP is now scheduled for a public meeting on November 7, 2017.² PacifiCorp proposes to conduct the solicitation process concurrently with the Commission's review of the 2017 IRP, although the Commission's order on the 2017 IRP will precede the filing of the 2017R RFP shortlist in early 2018. Allowing the RFP and IRP process to run concurrently in this manner is critical to delivering the customer benefits associated with this time-limited resource opportunity. As outlined below, PacifiCorp believes that this is consistent with the Commission's flexible

² *In the Matter of PacifiCorp's 2017 Integrated Resource Plan*, Docket No. LC 67, Prehearing Conference Memorandum (May 5, 2017). This schedule is consistent with OAR 860-027-0400, which sets a six-month review period for the IRP.

approach to Guideline 7, requiring alignment between a company's acknowledged IRP and an RFP. If not, PacifiCorp requests a waiver of Guideline 7 as necessary for the 2017R RFP.

PacifiCorp respectfully requests that all communications related to this filing be addressed to:

Oregon Dockets PacifiCorp
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Suite 2000
Portland, OR 97232
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Suite 2000 Portland, OR 97232
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Additionally, PacifiCorp requests that all data requests regarding this matter be addressed to:

By e-mail (preferred): datarequest@pacificorp.com

By regular mail: Data Request Response Center
PacifiCorp 825 NE Multnomah Street, Suite 2000
Portland, OR 97232

Please direct informal correspondence and questions regarding this filing to Natasha Siores, Manager, Regulatory Affairs, at (503) 813-6583.

II. BACKGROUND

A. The 2017R RFP is Aligned with the Resource Opportunities Identified in PacifiCorp's 2017 IRP.

The action plan in the 2017 IRP advances PacifiCorp's commitment to low-cost clean energy with the proposed addition of at least 1,100 MW of new wind resources by the end of 2020. These new zero-emission wind resources will rely on a new 140-mile, 500 kV transmission line segment and associated infrastructure running from the Aeolus substation near Medicine Bow, Wyoming, to a new annex substation, Bridger/Anticline, which will be located near the existing Jim Bridger substation. The new transmission project is a sub-

segment (sub-segment D2) of the Energy Gateway West transmission project.³ The 2017 IRP demonstrates that these wind resources will provide the cost savings necessary to construct the required transmission project and provide economic benefits for customers. PacifiCorp expects to add the new wind and transmission without significant rate impacts.

While PacifiCorp's 2017 IRP preferred portfolio includes a minimum of 1,100 MW of new wind resources paired with the transmission project, PacifiCorp estimates that the new transmission project can accommodate up to approximately 1,270 MW of additional wind resources. In its 2017R RFP, PacifiCorp proposes to evaluate, based on bids submitted, the level of wind procurement that maximizes customer benefits up to approximately 1,270 MW.

PacifiCorp's 2017 IRP assures that the company will provide adequate and reliable electricity supply at a reasonable cost and in a manner "consistent with the long-run public interest."⁴ The IRP identifies the preferred portfolio as the least-cost, least-risk portfolio that can be delivered through specific action items at a reasonable cost and with manageable risks, while ensuring compliance with state and federal regulatory obligations.

Using a range of cost and risk metrics to evaluate multiple resource portfolios in the 2017 IRP, PacifiCorp selected a preferred portfolio reflecting a cost-conscious plan that transitions to a cleaner energy future with near-term investments in both existing and new renewable resources, new transmission infrastructure, and energy efficiency programs. The selection of the preferred portfolio was identified after completing more than 200 modeling studies, each simulating dispatch of PacifiCorp's system over a 20-year planning horizon.

³ For additional information, go to the interactive Gateway project map at <http://www.gatewaywestmaps.com/>.

⁴ *In the Matter of Public Utility Commission Of Oregon Investigation Into Integrated Resource Planning*, Docket No. UM 1056, Order No. 07-002 at 7 (Jan. 8, 2007).

Each PaR study includes 50 iterations of system performance, which equates to over 10,000 simulations of potential 20-year system dispatch outcomes.

Assuming the new wind and transmission resources are operational by the end of 2020, and thus eligible for 100 percent PTCs, PacifiCorp's IRP analysis demonstrates that the company can make these investments with all-in economic savings for customers. The 2017 IRP analysis demonstrates that these projects result in base-case present-value customer savings ranging between \$18 million and \$23 million, without accounting for the expected incremental value of the renewable energy credits (RECs) that will be generated by the 1,100 MW of new wind.⁵

In addition to being least-cost, the resource acquisitions described in the preferred portfolio, including the 1,100 MW of new wind by 2020, are also least-risk. Based on current load expectations, portfolio modeling performed for the 2017 IRP shows the resource acquisition path in the preferred portfolio is robust among a wide range of policy and market conditions, particularly in the near-term.

PacifiCorp has included the 1,100 MW of additional wind resources in its preferred portfolio as cost-effective system resources, and not as resources necessary for renewable portfolio standard (RPS) compliance. These resources, however, will also contribute to PacifiCorp's ability to meet state renewable energy targets in Oregon, Washington, California and Utah.

⁵ Present value benefits increase by approximately \$30 million for every dollar assigned to RECs that will be generated by the new wind resources.

B. To Meet the 2020 PTC Deadline, PacifiCorp proposes to Conduct its RFP Process Concurrently with the IRP Process.

The transmission project and the new wind resources are mutually dependent. The new wind resources are not economic without the transmission project, which is needed to relieve existing congestion and to interconnect and integrate new PTC-eligible wind resources in high-wind areas of Wyoming. The transmission project is not economic if there are no incremental cost-effective wind resources generating PTCs. This interdependence requires that these projects be developed together. The lead time for constructing the transmission project is longer than the lead time to construct the wind projects, but PacifiCorp recognizes the need for review and approval of its competitive market procurement of the incremental wind resources and their impact on overall project economics before it commits to move forward with construction of the transmission project. This dictates that PacifiCorp establish a final shortlist of bids from the 2017R RFP by early January 2018 to inform the CPCN review and approval process in Wyoming. Approval of a conditional CPCN in Wyoming will allow PacifiCorp to begin acquiring the necessary rights of way for the transmission project; a critical path schedule activity. Upon establishing its final shortlist, PacifiCorp plans to seek acknowledgement of its 2017R RFP final shortlist, targeting Commission acknowledgement by March 2018 to ensure that the critical path schedule for the transmission project can proceed. A delay in establishing the final shortlist could delay construction of the transmission project and deprive customers of the time-limited opportunity to cost-effectively acquire the proposed wind resources. Thus, PacifiCorp cannot wait until the 2017 IRP is acknowledged in November 2017 before issuing the 2017R RFP.

C. The 2017R RFP will Ensure a Fair Bidding Process.

The 2017R RFP will specifically target resource procurement consistent with the 2017 IRP analysis showing all-in economic customer benefits when PTC-eligible wind is paired with the transmission project. Accordingly, the RFP will seek proposals for up to approximately 1,270 MW of competitively priced new wind projects that can deliver energy and capacity to PacifiCorp's transmission system in Wyoming. Bids must demonstrate that the proposed projects can achieve commercial operation no later than December 31, 2020. Bidders are encouraged to offer proposals under any of three different structures, including power purchase agreements (PPAs) with or without a purchase option, build-transfer structures in accordance with the terms of an asset purchase and sale agreement (APSA), and bidder-proposed alternative ownership structures.

To ensure a transparent and fair process, the 2017R RFP will be conducted under the oversight of an IE approved by the Commission, as required by the Guidelines.⁶ In addition, an IE approved by the Utah Public Service Commission (UPSC) will also oversee the RFP to ensure the process is consistent with Utah's administrative rules⁷ as well as being transparent and fair to all involved.

PacifiCorp intends to propose site-specific, self-build options, referred to in the Guidelines as a Benchmark Resources, into the 2017R RFP.⁸ The Benchmark Resources are intended to ensure that there is a sufficient volume of PTC-eligible new wind resource capacity available in the solicitation process, as required to deliver customer benefits identified in the 2017 IRP.

⁶ Order No. 14-149, Appendix A at 2 (Guideline 5).

⁷ Utah Code Ann. §54-17-203.

⁸ Order No. 14-149, Appendix A at 2 (Guideline 4).

Consistent with the Guidelines, the Benchmark Resource bids will be submitted a week before the market bids and sealed upon completion of the evaluation before market bids are opened. All proposals will be evaluated using the same assumptions, modeling and scoring.⁹ In the event proposals are subject to refreshing, the pricing and terms of all proposals will be allowed to be updated if desired by the bidder.¹⁰ The IE will have access to review the reasonableness of all bid scores including scores assigned to Benchmark Resources.¹¹

PacifiCorp intends to file the draft 2017R RFP on July 17, 2017, after the IE has been selected and can provide comments. PacifiCorp will also be filing for review and approval of the 2017R RFP with the UPSC. Consistent with Utah law,¹² the 2017R draft RFP will be filed in Utah June 16, 2017, and will be available for comments by parties and Utah's selected IE through August 8, 2017. This parallel review process allows all parties, as well as both IEs, to participate in development of the 2017R RFP.

Because of the time-limited nature of this resource opportunity, PacifiCorp proposes the following schedule for this docket:

⁹ Order No. 14-149, Appendix A at 3 (Guidelines 8 and 9).

¹⁰ Order No. 14-149, Appendix A at 3 (Guidelines 8 and 9).

¹¹ Order No. 14-149, Appendix A at 3-4 (Guideline 10).

¹² Part 2 of the Energy Resource Procurement Act, Utah Code Ann. Title 54, Chapter 17, as required by Utah Code Ann. §54-17-202 and Commission Rules R746-420.

EVENT	TARGET DATE
Receive IE Bids	June 15, 2017
IE Approval at Open Public Meeting	July 11, 2017
File Draft RFP with Oregon Commission	July 17, 2017
IE Files Report on Draft RFP	July 25, 2017
Party Comments on Draft RFP	August 8, 2017
PacifiCorp Reply Comments	August 15, 2017
Final RFP Approval at Open Public Meeting	August 22, 2017
RFP Issued to Market	August 25, 2017
Benchmark Resource bids due	October 6, 2017
RFP Bids Due	October 13, 2017
RFP Final Shortlist Filed with the Commission	January 16, 2018
IE Closing Report on RFP	February 15, 2018
Party Comments on IE Closing Report	February 22, 2018
Final Shortlist Acknowledgement	March 13, 2018
Execute Agreements	April 16, 2018

PacifiCorp also plans to request preapproval for the wind and transmission resources from the Wyoming Public Service Commission, the UPSC, and the Idaho Public Utilities Commission. PacifiCorp will file the 2017R RFP with the UPSC as required by Utah law, and will provide the Washington Utilities and Transportation Commission information on an informal basis through PacifiCorp’s ongoing IRP process.

III. 2017R RFP COMPLIANCE WITH GUIDELINES

A. Review of Guidelines

Below is a summary indicating how the 2017R RFP will comply with the Guidelines.

1. Guideline 1.

Guideline 1 requires PacifiCorp to issue an RFP for all major resource acquisitions identified in its acknowledged IRP. Major resources are defined as resources with durations

greater than five years and quantities greater than 100 MW. PacifiCorp is issuing the 2017R RFP to address the major resource additions reflected in the 2017 IRP, scheduled for acknowledgement in November 2017. PacifiCorp will not seek acknowledgement of the 2017R RFP final shortlist until after the 2017 IRP process is completed.

2. Guideline 2.

Guideline 2 allows the Commission to modify the requirements of the Guidelines when there is a “time-limited resource opportunity of unique value to customers.”¹³ In docket UM 1773, Staff articulated five criteria that should apply to requests for waivers of the Guidelines:

1. The utility must demonstrate a need for the resource.
2. The process must use an IE, or if that particular requirement is the subject of the waiver, the utility must demonstrate that the functions that would have been performed by the IE are covered through other means.
3. The process must allow sufficient stakeholder involvement.
4. The process must be fair, even if it is not the complete RFP process required by the Guidelines.
5. The RFP process must be clear and transparent.¹⁴

If the Commission concludes that any aspect of the 2017R RFP fails to comply with the Guidelines, PacifiCorp requests a waiver because the 2017R RFP presents a time-limited resource opportunity and meets the criteria for waiver under Guideline 2.

3. Guideline 3.

Guideline 3 is inapplicable because there will be no affiliate bids.

¹³ Order No. 14-149, Appendix A at 1.

¹⁴ Order No. 16-221, Appendix A at 9-10.

4. Guideline 4.

Guideline 4 allows PacifiCorp to include a self-build option in an RFP to provide a potential cost-based alternative for customers and PacifiCorp may also consider ownership transfers within an RFP solicitation. As discussed above, PacifiCorp will submit Benchmark Resources into the 2017R RFP and ownership transfers will be considered in the 2017R RFP.

5. Guideline 5.

PacifiCorp will use an IE, as required by Guideline 5, to “help ensure that all offers are treated fairly.”¹⁵ The Commission will approve the IE, and the IE will be independent of the utility and likely, potential bidders. Attached to this Application as Attachment 1 is the RFP for the IE. Given the time-sensitivity associated with the 2017R RFP, PacifiCorp is requesting that IE bids be submitted by June 15, 2017, so that the Commission can appoint an IE at its public meeting on July 11, 2017.

6. Guideline 6.

Guideline 6 requires that PacifiCorp prepare a draft RFP and provide it to all parties and interested persons in the company’s most recent general rate case, RFP, and IRP dockets. PacifiCorp has provided this Application to the parties identified in Guideline 6, and the company will make the draft RFP available to the required parties after July 17, 2017, after approval of the Oregon IE.

Guideline 6 further requires PacifiCorp to conduct bidder and stakeholder workshops on the draft RFP. PacifiCorp intends to work with the parties to include these workshops in the schedule for this docket.

¹⁵ Order No. 14-149, Appendix A at 2 (Guideline 5).

Following these workshops, PacifiCorp intends to submit a draft RFP to the Commission for approval on July 17, 2017. Although the draft submitted to the Commission will include standard form contracts, as provided by Guideline 6, PacifiCorp will allow bidders to negotiate mutually agreeable final contract terms that may be different from ones in the standard form contracts.

Guideline 6 also mandates that the draft RFP must set forth any minimum bidder requirements for credit and capability, along with bid evaluation and scoring criteria, and allows PacifiCorp to set a minimum resource size. The 2017R RFP will comply with these requirements.

Consistent with Guideline 6, PacifiCorp will consult with the IE in preparing the draft RFP, and the IE will submit its assessment of the draft RFP to the Commission before PacifiCorp files for approval of its draft RFP.

7. *Guideline 7.*

Guideline 7 states that the Commission’s review of a proposed RFP “should focus on: (1) the alignment of the utility’s RFP with its acknowledged IRP; (2) whether the RFP satisfies the Commission’s competitive bidding guidelines; and (3) the overall fairness of the utility’s proposed bidding process.”¹⁶ Based on this review, the Commission “may approve the RFP with any conditions and modifications deemed necessary.”¹⁷

In several cases, the Commission has shown flexibility in applying the requirement that an RFP align with an acknowledged IRP. In 2016, Staff “interpret[ed] the requirement for an acknowledged IRP to be tantamount to requiring that the Company demonstrates two

¹⁶ Order No. 14-149, Appendix A at 2.

¹⁷ Order No. 14-149, Appendix A at 2.

things: 1) a need for resources; and 2) a least-cost, least-risk (LC/LR) strategy to address this need.”¹⁸ Thus, if a pending IRP can establish these facts, it can be used in place of a more dated, acknowledged IRP to satisfy Guideline 7. In the past (both before and after the Commission issued the Guidelines in 2007), the Commission has allowed the RFP and IRP processes to run concurrently to capture the utility’s most up-to-date analysis.¹⁹ The Commission should apply this precedent here, especially given the time-limited opportunities presented in the 2017 IRP and the fact that Commission review of the 2017 IRP will be concluded before PacifiCorp files the 2017R RFP final shortlist for acknowledgement. Alternatively, under Guideline 5, PacifiCorp requests that the Commission waive strict application of the requirement that the 2017R RFP align with PacifiCorp’s most recent acknowledged IRP.²⁰

Applying Guideline 7 and 9 together, the Commission has also recognized that alignment with an acknowledged IRP can be established by showing use of consistent modeling and decision criteria.²¹ PacifiCorp will model bids under the 2017R RFP using analytical tools from its acknowledged 2015 IRP and its pending 2017 IRP.

¹⁸ Order No. 16-280, Appendix A at 7-8 (emphasis omitted).

¹⁹ *In the Matter of PacifiCorp, Request for Approval of Final Draft 2011 All Source Request for Proposals*, Docket No. UM 1540, Order No. 12-211 (Mar. 27, 2012) (approving RFP aligned with resource needs identified in IRP acknowledged after RFP filed); *In the Matter of Portland General Electric Company*, Docket No. UM 1345, Order No. 08-234 (Apr. 24, 2008) (RFP initiated while IRP review pending to avoid potential disadvantage to PGE customers associated with delay, and Staff’s assessment of the RFP was based on updated load forecast and analysis).

²⁰ In 2007, the Commission strictly applied Guideline 7 to deny a PacifiCorp RFP for new thermal resources on the basis that it was not aligned with an acknowledged IRP. Unlike here, in that case PacifiCorp did not have a pending IRP that provided comprehensively updated analysis. *In the Matter of PacifiCorp dba Pacific Power Draft 2012 Request for Proposals*, Docket No. UM 1208, Order No. 07-018 (Jan. 7, 2007).

²¹ *In the Matter of PacifiCorp, dba Pacific Power Request for Approval of Draft 2009R Request for Proposals for New Renewable Resources*, Docket No. UM 1429, Order No. 09-492 (Dec. 14, 2009) (acknowledging RFP shortlist on basis of cost-risk decision criteria in acknowledged and pending IRPs).

8. Guideline 8.

As required by Guideline 8, PacifiCorp will submit a detailed score for any Benchmark Resource, with supporting cost information, to the Commission and IE before the opening of market bids. PacifiCorp will also provide the Benchmark Resources' supporting cost information, including any transmission arrangements and all other information necessary to score the Benchmark Resource. The IE will review the reasonableness of the scores for the Benchmark Resources. The information provided to the Commission and IE will be sealed and held until the bidding evaluation in the RFP has concluded. The Benchmark Resource score will be assigned using the same bid scoring and evaluation criteria that will be used to score market bids. If bidder updates are allowed during the RFP, as determined by PacifiCorp, with input from the IE, PacifiCorp may update the costs and score for the Benchmark Resources.

9. Guideline 9.

PacifiCorp will evaluate and score each bid, including the Benchmark Resources, based on the requirements set forth in Guideline 9. As noted above, PacifiCorp proposes to evaluate and score each bid consistently with the modeling in its acknowledged 2015 IRP and its pending 2017 IRP.

10. Guideline 10.

The roles of PacifiCorp and the IE will conform to the requirements of Guideline 10. PacifiCorp will conduct the RFP process, score the bids, select the initial and final shortlists, and undertake negotiations with bidders.

Because PacifiCorp intends to submit Benchmark Resources into the RFP, the IE will independently score the Benchmark Resource and all or a sample of the bids to determine

whether the selection for the initial and final shortlists are reasonable. The IE will also evaluate the unique risks and advantages associated with the Benchmark Resource, including an evaluation of the following issues set forth in Guideline 10(d): construction cost over-runs (considering contractual guarantees, cost and prudence of guarantees, remaining exposure to ratepayers for cost over-runs, and potential benefits of cost under-runs); reasonableness of forced outage rates; end-effect values; environmental emissions costs; reasonableness of operation and maintenance costs; adequacy of capital additions costs; reasonableness of performance assumptions for output, heat rate, and power curve; and specificity of construction schedules or risk of construction delays.

Consistent with Guideline 10(e), PacifiCorp and the IE will compare the results of their respective scoring and evaluation of competing bids and Benchmark Resources, and attempt to reconcile and resolve any differences.

Because this is a wind RFP, PacifiCorp will also allow independent power producers to submit bids with and without an option to renew, as allowed by Guideline 10(f). PacifiCorp plans to use an independent third-party expert to review the expected wind capacity factor for all projects on the shortlist.

11. *Guideline 11.*

As required by Guideline 11, the IE will prepare a Closing Report for the Commission once the final shortlist has been selected. PacifiCorp will include the Closing Report with its application requesting acknowledgement of the final shortlist.

12. *Guideline 12.*

Bid information, including the utility's cost support for any Benchmark Resource, as well as detailed bid scoring and evaluation results will be made available to Staff and non-

bidding parties under protective orders that limit use of the information to RFP approval and acknowledgment and to cost recovery proceedings.

13. Guideline 13.

PacifiCorp will request that the Commission acknowledge the 2017R RFP final shortlist. As required by Guideline 13, the request will discuss the consistency of the final shortlist with the PacifiCorp's acknowledged 2017 IRP Action Plan (by that time, the Commission will have completed review of the 2017 IRP). The IE will participate in the RFP acknowledgment proceeding. PacifiCorp intends to file its application for acknowledgement of the shortlist on January 16, 2018, and requests that the Commission acknowledge the shortlist within 60 days, or by March 13, 2018, as provided for in Guideline 13.

B. Overall Fairness of the Proposed Bidding Process.

Staff has previously noted that the “use of an IE, the transparency of the process, and the inclusion of stakeholders . . . all indicate” the fairness of a bidding process.²² As described above, PacifiCorp's 2017R RFP will include robust participation by the IE and extensive stakeholder involvement. These facts, coupled with the approvals provide by the Commission throughout the process will ensure that the 2017R RFP is fair.


IV. CONCLUSION

PacifiCorp requests that the Commission open a docket for approval of a solicitation process for up to approximately 1,270 MW of new wind resources capable of interconnecting to, and/or delivering energy and capacity across, PacifiCorp's transmission system in Wyoming, and that the Commission appoint an IE to oversee the RFP process. The

²² Order No. 16-280, Appendix A at 11.

procurement of the proposed wind resources, together with construction of the proposed transmission project, will provide substantial customer benefits, are an integral component of PacifiCorp's long-term plans to provide stable, reliable electric service at just and reasonable rates, and serve the public interest.

Respectfully submitted this 1st day of June, 2017.



Sarah Link
Vice President & General Counsel
Pacific Power

**PacifiCorp's
Request for Proposals (“RFP”)
for
Independent Evaluator for PacifiCorp's
2017R Renewable Resource
Request for Proposals**

Issued: **June 1, 2017 Thursday**
Proposals Due: **June 15, 2017 Thursday**
5:00 PM Pacific Prevailing Time

Issuing Entity: PacifiCorp

PacifiCorp
Attn: Resource & Commercial Strategy
825 NE Multnomah, Suite 600
Portland OR 97232

Email: rfp_2017OIE@pacificorp.com

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- A Bidder Pricing Proposal
- B Professional Services Contract
- C Oregon Competitive Bidding Guidelines

I. INTRODUCTION AND BACKGROUND

PacifiCorp is seeking to acquire up to approximately 1,270 megawatts (MW) of wind resources with a commercial operation date of no later than December 31, 2020, through its 2017 Renewable (2017R) Request for Proposals (RFP). The 2017R RFP will be issued, consistent with analysis in PacifiCorp's 2017 Integrated Resource Plan (IRP) showing all-in customer benefits with the addition of the Aeolus to Bridger/Anticline transmission infrastructure and 1,100 megawatts of new wind resources to PacifiCorp's system. PacifiCorp will evaluate, based on bids submitted into the 2017R RFP, the level of wind procurement that maximizes customer benefits.

As stated in its 2017 IRP, PacifiCorp identified action plans to add at least 1,100 MW of new wind resources at costs that reflect the full value of federal production tax credits (PTCs) and that can achieve commercial operation by December 31, 2020. Federal tax extender legislation passed in late 2015 provides an opportunity for qualifying renewable energy projects to receive the full value of the federal PTC available under Section 45 of the Internal Revenue Code.¹

PacifiCorp is seeking proposals for competitively priced incremental wind projects that can interconnect to and/or deliver energy and capacity to PacifiCorp's Wyoming transmission system, as facilitated by a new 140 mile 500 kV transmission line running from the Aeolus substation near Medicine Bow, Wyoming to the Jim Bridger power plant (sub-segment D2 of the Energy Gateway West transmission project)². Proposals for new wind resources must demonstrate, to PacifiCorp's satisfaction, and as determined in its sole discretion, that the proposed project can achieve commercial operation no later than December 31, 2020.

Projects must be discrete generating assets that can be individually metered and remotely monitored. The minimum project size is 20.0 MW. PacifiCorp is not setting a maximum size limit for projects submitted into the 2017R RFP, but PacifiCorp will only consider projects that demonstrate a unique value opportunity for its customers, without compromising reliability. Proposed projects must be capable of interconnecting to PacifiCorp's Wyoming transmission system as facilitated by the Energy Gateway West sub-segment D2 addition, or be capable of delivering energy into PacifiCorp's Wyoming transmission system on a firm basis.

In the 2017R RFP, PacifiCorp will consider proposals for the following structures:

1. "Build-Transfer" structures whereby the bidder develops the project, assumes responsibility for construction, and ultimately transfers the asset to PacifiCorp upon or prior to the in-service date, all pursuant to the terms of an Asset Purchase and Sale Agreement (APSA). Projects bid under this structure must be designed and constructed materially compliant with PacifiCorp's specifications. Under this structure, the bidder is responsible for all development, design, wind-turbine supply, balance of plant (BOP) equipment, construction, and commissioning.
2. Power Purchase Agreement (PPA) for a 20-year term with exclusive ownership by PacifiCorp of any and all environmental attributes associated with all energy generated.³ PPA structures can, but

¹ As recently extended by Congress, the federal PTC currently provides a \$24 tax credit for each MWh of production from a qualifying renewable energy facility that begins construction (as interpreted by applicable guidance of the Internal Revenue Service) before January 1, 2017. The value of the PTC is reduced by 20% from projects beginning construction each year thereafter until it expires completely beginning on January 1, 2020.

² The proposed Gateway Segment D2 is a single-circuit 500 kV transmission line running approximately 140 miles from the planned Aeolus substation to a new annex substation (Anticline) near the existing Bridger substation in western Wyoming. For additional information, go to the interactive Gateway project map at <http://www.gatewaywestmaps.com/>.

³ As the term, Environmental Attributes, is defined in the pro-forma transaction documents for this RFP.

are not required to, include an option for PacifiCorp to purchase the project during, or at end of the contract term, to retain site value for PacifiCorp's customers.

To the extent bidders propose variations of a build-transfer structure or a PPA, such proposals will be considered at PacifiCorp's sole discretion. PacifiCorp reserves the right to reject non-compliant bids.

PacifiCorp will submit multiple self-build ownership bid options (benchmark resources), which the independent evaluator (IE) should take into account when developing its bid.

PacifiCorp is not bound to accept any bids and may cancel this solicitation at its own discretion.

A. PURPOSE

The purpose of this solicitation is to assist Public Utility Commission of Oregon (Commission) Staff in recommending an IE for PacifiCorp's 2017R RFP for the Commission's consideration. PacifiCorp will contract directly with the Commission-selected IE using **Attachment A - PacifiCorp Professional Services Contract**. The IE must be independent of the utility and potential bidders, and also be experienced and competent to perform all IE functions identified in Oregon's competitive bidding guidelines.

B. BACKGROUND

The Commission issued guidelines on competitive bidding for requests for proposals for Major Resource acquisitions, where Major Resources are defined as those of duration greater than five years and quantities greater than 100 MW.⁴ The 2017R RFP is subject to these guidelines, attached to this solicitation in **Attachment B – Competitive Bidding Guidelines**.

Under the Commission's Competitive Bidding Guidelines, an IE must be used in each Major Resource RFP to help ensure that all offers are treated fairly and consistently. The IE is tasked with ensuring the 2017R RFP bid evaluation and selection are also consistent the guidelines.

C. CONTRACT TERM AND AMENDMENTS

The IE contract is anticipated to be for an initial term of nine (9) months, with the option to renew on a month to month basis until the IE's participation in the 2017R RFP process is completed. The IE must be available according to the schedule established by the Commission.

D. ESTIMATED SCHEDULE OF IE RFP EVENTS

Milestone	Date
Open OR RFP Docket, Initiate IE RFP Process	06/01/2016
OR IE Bids Due	06/15/2016
OR Commission Staff Report Recommending IE Selection	07/06/2017
OR Commission Public Meeting Approving IE	07/11/2017

⁴ Order No. 06-446, UM-1182.

E. RESERVATION OF RIGHTS

PacifiCorp reserves the right in its sole discretion to:

- Amend this RFP for any reason or cancel this solicitation without liability if cancellation would be in the public interest;
- Reject any or all Proposals received in response to this RFP, without liability, if such rejection would be in the public interest. PacifiCorp is not responsible for any costs incurred by the bidder in connection with submitting proposals, and all bidders who submit a proposal do so solely at their own expense;
- Waive any minor irregularity, informality, or non-conformance with the provisions or procedures set forth in this RFP, and to seek clarification of each proposal if necessary;
- Contact any or all references submitted with the proposal.

F. SOLICITATION ADDENDA

PacifiCorp may revise this RFP prior to the RFP closing date. PacifiCorp will not waive, alter, modify, supplement or amend the terms of this RFP in any manner except by written addenda issued by PacifiCorp in the same manner as the original RFP was advertised. Any purported changes, additions, interpretations or clarifications to the RFP that are issued in any manner other than as described above will not be effective, and the bidder shall not rely upon such information.

G. PROPRIETARY INFORMATION

1. All information submitted by a bidder will be considered public information unless the bidder requests that information be treated as confidential, and the information is considered exempt under ORS 192.501 or 192.502. If a bidder declares any information contained in its bid submittal to be confidential, the bidder must specifically identify those sections as containing “Confidential Information” and briefly explain how and why the information is exempt from disclosure to the public in accordance with ORS 192.501 or 192.502. Specifically, any documents submitted and any documents exchanged between the parties that contain Confidential Information shall be marked on the outside as containing Confidential Information, and each page upon which Confidential Information appears must be marked as containing Confidential Information. The Confidential Information should be clearly identifiable to the reader wherever it appears.
2. All copies submitted, as well as the original proposal, must be marked in this manner. The request must also include the name, address, and telephone number of the person authorized by the bidder to respond to any inquiries by PacifiCorp concerning the confidential status of the materials. PacifiCorp agrees to treat such information as confidential and to submit such information to the Commission, or commissions, and other parties in accordance with a protective order.
3. In addition, the bidder agrees that certain Commission-authorized entities must be allowed to review such materials.

II. SCOPE OF WORK

A. DELIVERABLES

The 2017R RFP is being issued to pursue a time-sensitive economic opportunity driven by availability of PTCs. Consequently, the scope of work has a condensed and rigorous schedule, which bidders should fully consider in their proposals.

1. IE ASSESSMENT OF RFP DESIGN

- a. PacifiCorp will file an initial draft 2017R RFP with the Commission after selection of the IE to allow an opportunity for IE review of stakeholder comments and the IE evaluation and feedback on the draft 2017R RFP before the final draft RFP approval process is completed. This process will ensure that the final draft RFP reflects any comments received by both stakeholders and the IE without delaying the timeline for selection of a final shortlist of bids. The selected IE will complete a thorough assessment of the 2017R RFP design eight (8) calendar days after PacifiCorp awards the contract to the selected IE.⁵ The assessment should address the evaluation criteria, methods and computer models as well as the pro forma contracts included with the 2017R RFP. The assessment also should review the adequacy, accuracy and completeness of all solicitation materials to ensure compliance with the Commission's competitive bidding requirements and consistency with accepted industry standards and practices.
- b. IE will participate in joint discussions, as needed, with Utah's independent evaluator regarding final comments on the 2017R RFP to ensure a single final draft RFP is agreed and submitted to the Oregon and Utah Commissions for approval.

2. STATUS REPORT

The IE will be required to file two status reports with the Commission:

- a. First Status Report: The IE will file its first status report seven (7) calendar days after bidder eligibility screening is completed, noting any unresolved issues that could impair the equity or appropriateness of the solicitation process and including issues which are raised at the RFP pre-bid conference.
- b. Second Status Report: The IE will file its second status report fourteen (14) calendar days after PacifiCorp completes its initial short list (ISL) evaluation and selects an initial shortlist of bids. The IE will need to assess PacifiCorp's analysis and bid-selection process, including an assessment of PacifiCorp's rationale for bid elimination, as applicable. This second status report will be provided to the Commission under seal or on a highly confidential basis.

3. IE CLOSING REPORT

The closing report is due twenty-one (21) calendar days after PacifiCorp has selected the final short-list of bids.⁶ As part of the closing report, the IE will make its detailed bid scoring and evaluation results available to PacifiCorp, Commission Staff, and non-bidding parties in the 2017R RFP docket, subject to the terms of a protective order.⁷ The closing report will provide the IE's detailed assessment of PacifiCorp's selection of the final short-list of bids, including all aspects of

⁵ See Guideline 6. The assessment should take into account the Commission's goals (page 2 of the order) and the three criteria for RFP approval (Guideline 7) and specifically address Guidelines 6, 7, 8, 9, 10, 11 and 13, as well as issues raised by stakeholders.

⁶ Use of the term "bids" shall include market bids and company self-build ownership options unless the reference clearly refers to an alternative.

⁷ See Guideline 11.

the solicitation process and the IE's involvement, observations, conclusions and recommendations. The reasons and basis for a) ranking market bids and benchmark resource options, b) selecting a market bids or a benchmark resource options, and c) rejecting market bids or benchmark resource options, are to be fully detailed in the IE's closing report.

The closing report will also include an analysis of whether or the extent to which:

- a. the resources selected minimize long-term costs for PacifiCorp's retail customers taking into consideration overall system costs and risks,
- b. the solicitation process was fair,
- c. PacifiCorp's benchmark resource options were considered and evaluated consistent with the Commission's competitive bidding guidelines,
- d. screening factors and weights were applied consistently and comparably to all market bids,
- e. credit and security requirements, liquidated damages provisions, warranties and other similar requirements were appropriately applied to bid evaluation and appropriately affected the outcome of the solicitation process,
- f. all reasonably available data and information necessary and in order for a potential bidder to submit a bid was provided,
- g. the IE was provided with or given access to all data, information and models relevant to the solicitation process in order to permit full and timely scoring, testing and verification of assumptions, models, inputs, outputs, and results,
- h. confidentiality claims and concerns between the IE and PacifiCorp were resolved in a manner that preserved confidentiality as necessary, yet permitted dissemination and consideration of all information reasonably necessary for the bidding process to be conducted fairly and thoroughly, and
- i. the evaluation was performed consistent with Commission-approved competitive bidding guidelines.

The report also will include results from tasks listed below:⁸

- a. **Scores for bids** – The IE's independent scoring of all or a sample of the bids to determine whether the selections for the initial and final short-lists are reasonable.
- b. **Evaluation of risks and disadvantages of benchmark resource options** - The IE's independent evaluation of the unique risks and advantages associated with the benchmark resource options, including the regulatory treatment of costs or benefits related to actual construction cost and plant operation differing from what was projected for the RFP.
- c. **Comparison of utility and IE scores** – Comparison between PacifiCorp's and the IE's scoring and evaluation of the competing bids and benchmark resource options, following a meeting(s) with PacifiCorp to attempt to reconcile and resolve any scoring differences. Include an explanation of the reconciliation process and any remaining differences. In the closing report, the IE will be required to disclose any conflict of interest regarding any of the actual RFP bidders.

B. OTHER ACTIVITIES⁹

1. Confer with Commission Staff as needed on the IE's duties.¹⁰ These discussions are anticipated to be performed in person, by phone and by e-mail.

⁸ Guidelines 10(d) and 10(e).

⁹ Meetings with Commission Staff will occur in Salem, OR unless otherwise directed. Meetings with PacifiCorp will occur in Portland, OR unless otherwise directed.

¹⁰ Guideline 5.

2. In consultation with Commission Staff, participate in additional meetings with parties, hosted by Staff, related to final short-list selection or any request for acknowledgment of the final short-list.
3. Participate in the pre-bid conference (anticipated within 10 calendar days after notice of intent to bid submittals are due) and make a presentation to communicate the IE role in the 2017R RFP process. Participate in any additional pre-bid conferences.
4. Review and comment on PacifiCorp's screening process for bidder eligibility.
5. Participate in any Commission public meeting (if any) related to the Commission's consideration of RFP approval, based on the IE's assessment of the 2017R RFP design.
6. Monitor all aspects of the solicitation process from the RFP issuance through the final shortlist of bids, including the following:
 - a. Submission of detailed scores for benchmark resource options to the IE and Commission prior to the opening of market bids
 - b. Bidder eligibility screening
 - c. Communications between bidders and PacifiCorp before and after proposals are due
 - d. Any requested bidder updates (along with any updates to benchmark resource options)
 - e. Any RFP amendments issued by PacifiCorp
 - f. Evaluation and ranking of responses
 - g. Selection of the initial shortlist of bids
 - h. Selection of the final shortlist of bids
 - i. Monitoring the solicitation process and discussions with bidders during the period between the final shortlist determination and any acknowledgement of the final shortlist.

The IE may be requested by Commission Staff to perform additional monitoring for the period between any acknowledgement process and contract finalization. Such a request will be made by the Commission Staff to PacifiCorp directing PacifiCorp to issue a revised scope of work and request an incremental cost estimate from the IE, which, if acceptable to the Commission Staff, will result in an amended contract with the IE.

7. Audit the evaluation process and validate that evaluation criteria, methods, models, and other solicitation processes have been applied as approved by the Commission and consistently and appropriately applied to all bids and benchmark resource options. Verify assumptions, inputs, outputs and results are appropriate and reasonable.
8. Verify the basis for selection of the initial shortlist of bids.¹¹
 - a. Verify that the price score is calculated as the ratio of the bid's projected total cost per megawatt-hour to forward market prices, using real-levelized or annuity methods.
 - b. Verify that the non-price score is based on resource characteristics identified in PacifiCorp's acknowledged IRP (e.g., resource term, type, development, etc.) and conformance to the standard form contracts attached to the RFP. (Note: The utility must allow bidders on the final short-list to negotiate

¹¹ Guideline 9(a).

mutually agreeable final contract terms that are different from ones in the standard form contracts.^{12, 13)}

9. Verify the basis for selection of the final shortlist of bids.¹⁴
 - a. Verify the results of modeling the effect of candidate resources on overall system costs and risks.
 - b. Verify that the portfolio modeling and decision criteria used to select the final shortlist of bids are consistent with the modeling and decision criteria used to develop PacifiCorp’s acknowledged IRP Action Plan.
10. Advise PacifiCorp and Commission Staff of any issue that might reasonably be construed to affect the integrity of the solicitation process and provide PacifiCorp an opportunity to remedy the defect identified. Advise Commission Staff of significant changes or unresolved issues as they arise.
11. Independently score benchmark resource options and all or a sample of the market bids to determine whether the selections for the initial and final shortlists are reasonable. Based on an initial sample of market bids, the IE should use its judgment regarding whether independent scoring of all bids is appropriate, in consultation with Commission Staff.
12. Independently evaluate the unique risks and advantages associated with the benchmark resource options, including the regulatory treatment of costs or benefits related to actual construction cost and plant operation differing from what was projected for the RFP.
13. Compare the IE’s and PacifiCorp’s scoring and evaluation of the competing bids and benchmark resource options and attempt to reconcile and resolve any scoring differences.
14. Participate in Commission proceedings on acknowledgment of the final short-list of bids, if PacifiCorp requests such acknowledgment.¹⁵ Participation would include oral comments at a Commission public meeting or hearing.
15. Participate in any additional meetings with parties on request.

III. PACIFICORP’S PROPOSED 2017R RFP TIMELINE

The table below contains PacifiCorp’s proposed 2017R schedule. Dates are subject to change.

Milestone	Type of Milestone	Date	Number of days
2017 IRP filed (Includes RFP Action Item)	IRP	04/04/2017	-
Review OR IE RFP draft with OR Commission staff	Reg (OR)	05/25/2017	51
Open OR RFP docket, Initiate IE RFP process	Reg (OR)	06/01/2017	7
OR IE bids due	Reg (OR)	06/15/2017	14
Training on Code of Conduct / Benchmark vs. Evaluation Team	RFP	06/15/2017	-
OR Commission Public Meeting Approving IE	Reg (OR)	07/11/2017	26
File draft RFP with OR Commission	Reg (OR)	07/17/2017	6
OR IE files report on draft RFP	Reg (OR)	07/25/2017	8

¹² Guideline 6.

¹³ PacifiCorp’s 2017 IRP acknowledgement process is expected to be finalized before the 2017R RFP process ends.

¹⁴ Guideline 9(b).

¹⁵ Guideline 13.

Milestone	Type of Milestone	Date	Number of days
OR stakeholder comments on draft RFP	Reg (OR)	08/08/2017	14
OR Commission public meeting approving RFP	Reg (OR)	08/22/2017	14
RFP issued to market	RFP	08/25/2017	3
Notice of Intent to Bid due	RFP	09/06/2017	12
Bidder's Conference	RFP	09/13/2017	7
Benchmark bids due	RFP	10/06/2017	23
RFP bids due	RFP	10/13/2017	7
Bid eligibility screening completed	RFP	10/20/2017	7
IEs' review of bid eligibility / IE files 1st status report	Reg (OR)	11/03/2017	14
Initial Shortlist (ISL) evaluation/scoring completed	RFP	11/22/2017	19
IEs' Review of ISL completed	RFP	12/06/2017	14
ISL Price Update	RFP	12/13/2017	7
OR Commission public meeting 2017 IRP acknowledgement	IRP	12/19/2017	6
UT Commission order on 2017 IRP acknowledgement	IRP	01/08/2018	20
Final Shortlist (FSL) evaluation completed	RFP	01/08/2018	-
IE's review of FSL completed	RFP	01/15/2018	7
FSL filed with OR Commission for acknowledgement	Reg (OR)	01/16/2018	1
OR IE files RFP closing report	Reg (OR)	02/15/2018	30
OR stakeholders comments on IE closing report	Reg (OR)	02/22/2018	7
OR Commission public meeting acknowledging FSL	Reg (OR)	03/13/2018	19
OR Commission FSL acknowledgement order	Reg (OR)	03/20/2018	7
Execute agreements	RFP	04/16/2018	27

IV. MANDATORY MINIMUM QUALIFICATIONS

For this IE RFP, the Commission has directed that the IE must be independent of the utility and potential bidders.¹⁶ The following are minimum requirements that must be demonstrated by Bidders:

1. Bidder shall be experienced and competent to perform all IE functions identified in the competitive bidding guidelines.
2. Bidder shall disclose all business conducted with PacifiCorp or its affiliates¹⁷, past or present.
3. Bidder shall re-confirm, upon receipt of the bidder list, that the bidder has no conflict of interest with any of the bidders or their affiliates.
4. Bidder shall disclose any conflict, or potential conflict of interest, that might arise during the course of the project, including any potential bidders in PacifiCorp's 2017R RFP.
5. Bidder shall demonstrate its experience and competence in assessment, evaluation and monitoring related to competitive bidding for electricity supplies.

V. PROPOSAL CONTENTS

Bidders must include the following in their proposal:

¹⁶ Order No. 06-446.

¹⁷ Unless directed by the Commission otherwise, a PacifiCorp "affiliate" shall be limited to Berkshire Hathaway Energy and its subsidiaries.

A. QUALIFICATIONS

The bidder shall provide all information deemed necessary to fully demonstrate the bidder's qualifications as required under Article IV above.

B. BIDDER STAFF ORGANIZATION

Each proposal shall explain the bidder's staff organization and responsibility hierarchy of staff to be assigned to the 2017R RFP. Such assignments and responsibilities shall be broken down and described by task. The bidder shall highlight illustrations of relevant prior experience on similar projects.

C. REQUIRED SUBMITTALS

Detailed response containing:

1. A complete narrative of the bidder's assessment of the work to be performed, the bidder's ability and approach, and the resources necessary to fulfill the requirements of this RFP. This should demonstrate the bidder's understanding of the IE's performance expectations. Clearly indicate any options or alternatives proposed.
2. A specific point-by-point response by task number (e.g., "A1"), in the order listed in the detailed scope of work, to each requirement in the RFP.
3. –Bidders must provide a cost proposal that includes all-inclusive fixed costs for each task in the detailed scope of work by pricing area, as specified in Attachment A.
4. Qualification and expertise of staff proposed for this project.
5. Experience and competence in assessment, evaluation and monitoring related to competitive bidding for renewable resource supplies. Specifically, the bidder should document experience with assessing and evaluating renewable resources, including experience with market bids and utility benchmark resource options. Such experience should include evaluating power supply alternatives including production cost modeling to evaluate cost and risk.
6. Experience and competence in assessment, evaluation and monitoring related to competitive bidding for supplies within the Western Electric Coordinating Council (WECC).
7. Demonstrated knowledge of existing or anticipated renewable portfolio standards within the WECC.
8. Work samples demonstrating such expertise and competence, including work samples demonstrating the bidder's willingness and ability to work independent of utilities and to rigorously review, evaluate, and critique utility RFPs for renewable energy resources.
9. Performance references for similar projects.
10. Use of electronic platform for management of bid submittal, communication, and documentation of evaluation.
11. Bidders must declare any conflicts of interest by identifying any conflict, or potential conflict of interest that might arise during the course of the project.
12. Disclose any past, current or anticipated future relationship with or work for PacifiCorp, any PacifiCorp affiliate, and any public utility regulatory agency in any of the states served by PacifiCorp. This disclosure should specify the date, nature and scope of any such relationship or work.¹⁸

¹⁸ An oral presentation by a bidder to clarify a proposal may be required.

D. COST PROPOSAL REQUIREMENTS

The information requested in this section will be used by the Commission Staff to evaluate the reasonableness of the overall project price quotation. The bidder must estimate the major cost categories and hours associated with each task.

As a minimum requirement, each proposal shall contain the following:

1. Personnel costs, itemized and broken down by:
 - a. personnel category (i.e. project manager etc.),
 - b. names of personnel in each category to be used,
 - c. estimated hours for each task,
 - d. rates per hour for each person, and
 - e. subtotal for personnel cost.
2. Itemized cost of materials, supplies and copies and a subtotal for these elements.
3. Fully itemized transportation and related costs, itemized and broken down by at least:
 - a. travel,
 - b. lodging,
 - c. meals and other costs, and
 - d. subtotal for transportation and related costs.

VI. PROPOSAL REQUIREMENTS AND SUBMISSION

A. QUESTIONS

Interested parties and bidders may submit questions related to this solicitation, and PacifiCorp will respond in a timely fashion. All information, including pre-bid materials, questions, and PacifiCorp's response to questions, will be posted on the PacifiCorp website at www.pacificorp.com. Any questions on the RFP or related documents should be sent to Company via email at **rfp_2017OIE@pacificorp.com**.

B. SUBMISSION OF BIDS

Three copies (3) of each proposal, one (1) of which must bear the original signature, must be received no later than **5:00 PM Pacific Prevailing Time on June 15, 2017**. Proposals received after this time and date will not be accepted and returned to the bidder.

PacifiCorp also requests that an additional copy be submitted electronically to **rfp_2017OIE@pacificorp.com**.

All submitted bids must be transmitted by express, certified or registered mail, or hand delivery to the following address:

**PACIFICORP
OREGON IE RFP
ATTENTION: RESOURCE & COMMERCIAL STRATEGY
825 NE MULTNOMAH, SUITE 600
PORTLAND, OREGON 97232**

Email: rfp_2017OIE@pacificorp.com

Each Proposal shall be in the format outlined in this section. Each Proposal shall be submitted prepared on standard 8 1/2 inch by 11 inch recycled paper, duplex printed (2 sided). Each Proposal shall be stapled or bound separately. THE PROPOSAL MUST BE ORGANIZED IN THE SAME ORDER AS THE INFORMATION IS REQUESTED IN THIS RFP. PacifiCorp may reject any Proposal that fails to follow these instructions

VII. SCORING CRITERIA

From the information submitted in accordance with Article V, proposal contents, and client references, the evaluation committee (see Article VIII) will score proposals based upon the following:

A. UNDERSTANDING OF THE SCOPE OF WORK

A maximum of one hundred (100) points are assigned to this section. Understanding of the scope of work and the deliverables that will be me including, but without limitation:

1. The bidder's description of the tasks in its deliverables (50 points)
2. Whether the bidder appears to have sufficient knowledge and understanding of the functions to be performed. (50 points).

B. DEMONSTRATED ABILITY OF BIDDER TO PERFORM PROPOSED WORK

A maximum of three hundred (300) points are assigned to this section. Demonstrated training, experience and ability of the bidder and its individual staff member(s) that will be assigned to the project to perform the proposed work, including, but without limitation:

1. Specific experience reviewing an RFP for renewable resources, including experience with evaluating market bids and utility benchmark resource options. (200 points)
2. Experience evaluating another type of renewable resource RFP or other related experience in the WECC. (50 points)
3. Experience evaluating another type of renewable resource RFP or other related experience. (50 points)

C. SOUNDNESS, PROFESSIONALISM AND FEASIBILITY OF THE BIDDER'S METHODOLOGY

A maximum of two hundred (200) points are assigned to this section. The soundness, professionalism and feasibility of the methods and techniques which shall include data collection, data analysis, project management and planning.

D. PRICE PROPOSAL

A maximum of four hundred (400) points are assigned to this section. The cost of the project, the overall elements of that cost and the overall appropriateness of the cost in relation to the project as proposed. (Attachment A).

1. The cost of the project, the overall elements of that cost. (200 points)
2. The overall appropriateness of the cost in relation to the project as proposed. (200 points)

VIII. PROCESS SELECTION

A. EVALUATION

1. Initial Review: PacifiCorp and Commission Staff will review all proposals to help ensure that all prescribed provisions and procedures have been met. Proposals that do not meet all prescribed mandatory qualifications, solicitation procedures and requirements may be rejected and eliminated from the selection process. Proposals meeting the prescribed solicitation procedures and requirements will be forwarded to an evaluation committee composed of Commission Staff, PacifiCorp and interested non-bidding parties.
2. Evaluation Committee Process: Each member of the evaluation committee will independently review and score each proposal. After each member of the evaluation committee has reviewed and scored each proposal, the evaluation committee will meet to discuss their findings and develop consensus scores for each proposal based on criteria listed above.
3. Scoring: The entities or individuals submitting the highest scoring proposals shall be recommended to the Commission for its consideration.
4. Recommendation to Commission: Staff will issue a report for the Commission public meeting five (5) days prior to the public meeting, with its recommendation for an Oregon IE for PacifiCorp's 2017R RFP.
5. Commission's ultimate discretion in selecting IE: The Commission will consider Staff's recommendation and comments from PacifiCorp and non-bidding parties in selecting the IE, but the ultimate discretion to select an IE lies with the Commission. The Commission will direct PacifiCorp to enter into a contract with the selected IE.

B. SELECTION NOTIFICATION

PacifiCorp will notify every bidder of its selection status.

IX. CONTRACT INFORMATION

A. PROFESSIONAL SERVICES CONTRACT

1. The selected bidder will be required to enter into a professional services contract with PacifiCorp based on the scope of work described herein and in a form substantially similar to the form attached to this RFP. Commission staff will review the draft PacifiCorp contract prior to execution to ensure that it conforms to this solicitation and the Commission's competitive bidding guidelines.
2. The state of Oregon will not be a party to the resulting contract, and will not be responsible for any conflicts that arise between PacifiCorp and the selected IE.

Attachment A

BIDDER PRICING PROPOSAL

Oregon Independent Evaluator for PacifiCorp's 2017R Request for Proposal

Bidder Name: _____
Address: _____

Phone: _____
Fax: _____
Email: _____

Pricing for this RFP shall be defined into four areas. Bidder shall provide fixed pricing by area.

ALL PRICING SHALL BE FIXED.

Area One: IE Assessment of PacifiCorp's RFP Design \$ _____
Re: Deliverables
A-1

Area Two: Reports, Scores, Evaluations, Presentations \$ _____
Re: Deliverables
A-2 Status Reports
A-3 IE Closing Report B-1, 2, 3, 5, 8, 9 and 10.
Participate in activities, confer with Commission Staff and PacifiCorp, and attend Commission meetings and present information as required.

Area Three: Pricing to be calculated based on quantity of renewable resource bids received by PacifiCorp.

PacifiCorp RFP scoring

Re: Deliverables
B-4 Review Bidder eligibility screening
B-6 Monitoring of solicitation process
B-7 Audit evaluation process
B-11 Independently score market bids and Benchmark Resource options
B-12 Independently evaluate risks of Benchmark Resource options
B-13 Compare IE and PacifiCorp scoring

Quantity of bids (provide fixed pricing for each quantity of bids, below. If you intend to have a flat rate for any number of bids, enter that rate on the first row and \$0 on the subsequent rows.)

One to Twenty (1 – 20)	\$ _____
Twenty-One to Forty (21 – 40)	\$ _____
Forty-One to Sixty (41 – 60)	\$ _____
Sixty-One to Eighty (61 – 80)	\$ _____
Eighty-One to One hundred (81 – 100)	\$ _____

The pricing should take into account the fact that one project may be bid into the 2017R RFP as several different bid proposals and that the time and cost associated with analysis of multiple bids from the same project should be appropriately recognized.

Area Four: A separate cost proposal must be provided for **each** of the following conditional tasks.

B-14 Participate in Commission proceeding on acknowledgment of final short-list
\$ _____

B-15 Participate in additional meetings with parties (cost per meeting)
\$ _____

Pricing will be scored by the evaluation committee based on aggregate total of Area One, Area Two, and each item under Area Three and Area Four.

Pricing shall account for 40% of overall score for each proposal.

Attachment B

**DRAFT COPY
PACIFICORP PROFESSIONAL SERVICES CONTRACT**

PROFESSIONAL SERVICES CONTRACT

BETWEEN
PACIFICORP
AND
FOR

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PROFESSIONAL SERVICES CONTRACT**BETWEEN****PACIFICORP****AND****FOR****PARTIES**

The Parties to this Professional Services Contract (“Contract”) are **PACIFICORP** (hereinafter “Company”), whose address is 825 NE Multnomah Street, Portland, Oregon 97232, and _____ (hereinafter “Consultant”), whose address is _____. Company and Consultant are hereinafter sometimes collectively referred to as “Parties” and individually as a “Party,” as the context may require.

ARTICLE 1. DEFINITIONS

BES Cyber System Information (BCSI) shall mean information concerning CIPS Covered Assets that: (i) relates to the production, generation or transmission of energy; (ii) could be useful to a person planning an attack on critical infrastructure; and (iii) provides strategic information beyond the geographic location of the critical asset, and which is identified as BCSI by Company. BCSI also includes any information concerning CIPS Covered Assets that has been identified by Company as Critical Infrastructure Information (or CII).

CIPS Covered Assets shall mean any assets identified by Company as “critical assets,” “critical cyber assets,” “BES assets,” “BES cyber assets,” or “BES cyber systems,” as those terms are defined in the North American Electric Reliability Corporation (NERC) Glossary of Terms. “BES” refers to the “Bulk Electric System” as defined by NERC.

Company’s Facilities shall mean any facilities owned, operated or otherwise controlled by Company which require Company authorization to obtain access.

Deliverables shall mean those items to be developed and delivered by Consultant as set forth in the Scope of Work.

Force Majeure Event shall mean a delay caused by any national or general strikes (but excluding strikes relating solely to the work force of Company, Consultant or a Subcontractor), fires, riots, acts of God, acts of the public enemy, floods, acts of terrorism, unavoidable transportation accidents or embargoes, or other events which are: (i) not reasonably foreseeable as of the date the Contract was executed; and (ii) attributable to a cause beyond the control and without the fault or negligence of the Party incurring such delay.

Material Adverse Change or MAC shall mean, with respect to Consultant, if Consultant, in the reasonable opinion of Company, has experienced a material adverse change in Consultant’s financial condition or Consultant’s ability to fulfill its obligations under this Contract, including, but not limited to, any such change that results in its inability to satisfy ARTICLE 8. CREDIT REQUIREMENTS or ARTICLE 9. SECURITY, including any event or circumstance that would give Company the right to terminate for cause pursuant to ARTICLE 32. TERMINATION FOR CAUSE.

Net Replacement Costs shall mean the “cost to cover” remedy available to Company in the event of a default by Consultant under this Contract. The Net Replacement Costs shall be: (i) the incremental costs incurred by Company to complete the Work itself or through use of a replacement consultant; plus (ii) a sum for additional managerial, administrative, and other reasonable costs Company incurs as a result of Consultant’s default.

Notice shall mean a formal written communication which, pursuant to the Contract, one Party must deliver to the other in order to invoke a Contract right set forth herein.

Personnel shall mean the employees of Consultant or any of its agents, Subcontractors, or independent contractors who are employed to perform Work under this Contract.

Scope of Work shall be detailed in this Contract, including all exhibits hereto and all standards, specifications, criteria and other requirements which are incorporated by reference.

Sensitive Personnel shall mean all Personnel with authorized unescorted physical access or authorized cyber access to Company's CIPS Covered Assets.

Service(s) shall mean any labor, skill, or advice provided to Company pursuant to this Contract.

Subcontractor shall mean any entity or person (including subcontractors at any tier) having an agreement with Consultant or any other Subcontractor to perform a portion of Consultant's obligations under this Contract.

Unescorted Personnel shall mean all Personnel with authorized unescorted physical access to Company's Facilities.

Work shall mean all obligations, duties, requirements, and responsibilities for the successful completion of the Contract by Consultant, including furnishing of all Services, Deliverables and incidental materials and equipment in accordance with the terms and conditions set forth in the Contract.

Workers' Compensation Laws shall mean the statutory requirements of the state and/or federal regulations (e.g., FELA, USL&H, Jones Act) where the Work is to be performed.

Work Site shall mean the location or locations on Company's premises where the Work is to be performed.

ARTICLE 2. DESCRIPTION OF WORK

Consultant shall perform the Work in accordance with the Scope of Work.

Except as otherwise provided in this Contract, Consultant shall be solely responsible for the means, methods, and procedures of performing the Work.

ARTICLE 3. PERIOD OF PERFORMANCE

Time is of the essence. Consultant shall commence performance upon execution of this Contract by Company and shall complete the Work not later than _____. Unless earlier terminated as provided herein, this Contract shall continue in effect until final completion of all Work set forth herein; provided, however, that all warranties, indemnities, insurance requirements, confidentiality obligations, or other obligations which by their own terms are intended to survive the completion of the Work shall continue in full force and effect after such date.

ARTICLE 4. CONSIDERATION AND PAYMENT

As full consideration for the satisfactory performance of Consultant's obligations under this Contract, Company will pay Consultant in accordance with Exhibit B.

Consultant shall invoice Company on a monthly basis, and shall submit each invoice to the Company designated representative. All invoices shall include each employee's name and skill classification responsible for Work under said invoice, hours worked on the project (billable hours), hourly rate, and a subtotal cost by skill classification. Consultant shall not bill Company for a higher skill classification than is required for the Work. Consultant shall furnish reasonable backup detail supporting each invoice including, without limitation, receipts supporting expenses that are reimbursed pursuant to ARTICLE 6. TRAVEL. Consultant shall identify and clearly set forth on the invoice any discount for early payment.

Company will pay all undisputed invoice amounts within sixty (60) calendar days of receipt of a proper invoice and Company's acceptance of the Work. Payment shall be contingent upon Consultant's satisfactory compliance with the invoicing requirements.

Company may offset any such payment to reflect amounts owing from Consultant to Company or its subsidiaries pursuant to this Contract. In addition, Company may withhold all payments otherwise due Consultant until such time as Consultant has provided any Default Security required by this Contract.

Upon request by Company, Consultant shall also provide lien and claim releases executed by Consultant, its Subcontractors and their suppliers through the date of each invoice submitted.

ARTICLE 5. TAXES

The consideration to be paid under the Contract includes all taxes arising out of Consultant's performance hereunder, including without limitation state and local sales and use taxes, value-added taxes, import duties, payroll taxes, income taxes and other taxes relating to the performance of the Work.

ARTICLE 6. TRAVEL

If required for the Work, pre-approved expenses for travel and related expenses will be reimbursed at Consultant's cost to the extent that such expenses are supported by original receipts or invoices and are in accordance with Company's travel policy attached hereto as Exhibit G. Such expenses will be invoiced as separate line items on any applicable invoice.

ARTICLE 7. ACCOUNTING AND AUDITING

Consultant shall keep accurate and complete accounting records in support of any cost-based billings and claims to Company in accordance with generally accepted accounting principles. Company, or its audit representatives, shall have the right at any reasonable time or times to examine, audit, and copy the records, vouchers, and other source documents which relate to any claim for compensation other than pricing elements which are fixed in amount by this Contract. Such documents shall be available for examination, audit and reproduction for three (3) years after completion or termination of this Contract.

Consultant shall assist Company with preparing necessary audit material and will allow Company to review any work papers prepared by independent auditors as allowed by professional standards.

Audit findings by Company's representative will be considered to be final and conclusive for the period audited. Any over collections shall be returned to Company within thirty (30) calendar days from date of Notice of overcharge.

ARTICLE 8. CREDIT REQUIREMENTS

Consultant shall meet the requirements of either clause (i) or clause (ii) below: (i) Consultant maintains a senior unsecured debt rating from Standard & Poor's of BBB- or better; or (ii) if Consultant does not maintain a satisfactory debt rating, Consultant meets ALL of the following credit standards: a) tangible net worth ten (10) times the projected maximum liability of Consultant under this Contract; b) no change in the condition of its earnings, net worth, or working capital over the last twenty-four (24) months, which would reasonably be anticipated to impair Consultant's ability to meet its obligations under this Contract; and c) Consultant is not in default under any of its other agreements and is current on all of its financial obligations.

If requested by Company, Consultant shall within thirty (30) calendar days provide Company with copies of its most recent annual and quarterly financial statements prepared in accordance with generally accepted accounting principles.

ARTICLE 9. SECURITY

In the event Consultant is unable to satisfy the credit requirements set forth in ARTICLE 8. CREDIT REQUIREMENTS at any time during the performance of the Work, or if Consultant experiences a Material Adverse Change at any time during such performance, then Consultant shall provide Company with security against defaults by Consultant under this Contract in such form and amount as may be reasonably required by Company ("Default Security"), and pursuant to such additional agreements or instruments as may be reasonably required by Company, including but not limited to letters of credit, third party guaranties, escrow accounts, labor and material payment bonds and/or performance bonds. Company may at any time, at its own discretion or pursuant to a request by Consultant, recalculate the amount of Default Security required pursuant to this Article, in which case Company shall increase or decrease the existing amount of Default Security, as appropriate. At no time shall the amount of Default Security to which Company is entitled pursuant to this Article be less than Company's Net Replacement Costs.

The terms of any letter of credit required by Company shall conform to the attached Exhibit C, as well as the requirements of this Contract and be issued by a bank acceptable to Company. The letter of credit shall provide for payment to Company of the letter of credit stated amount if Consultant defaults under the terms of this Contract. Company shall have the right to call the entire amount of the letter of credit if Consultant has not renewed the letter of credit thirty (30) calendar days prior to its expiration.

Consultant's expenses of complying with additional Default Security obligations as set forth in this Article shall be borne by Consultant.

ARTICLE 10. WITHHOLDING PAYMENT

Company may, without limiting any other rights or remedies Company may have, withhold from payments amounts which reflect the reasonable cost to repair or replace non-conforming or defective Work or the value of any claim which Company has against Consultant under the Contract. Company may also retain from any payment sufficient funds to discharge any delinquent accounts of Consultant for which liens on Company's property have been or can be filed, and Company may at any time pay therefrom for Consultant's account such amounts as are, in the reasonable opinion of Company, due thereon, including any sums due under any federal or state law.

ARTICLE 11. DESIGNATED REPRESENTATIVES AND NOTICES

Prior to the commencement of the Work, each Party shall designate a representative authorized to act on its respective behalf and shall advise the other Party in writing of the name, address and telephone number of such designated representative, and shall inform the other Party of any subsequent change in such designation. All communications relating to the day-to-day activities under this Contract shall be exchanged between such designated representatives through any agreed form of communication.

Any formal Notice required to be delivered in writing under the terms of this Contract shall be delivered to the representative of the other Party as designated below. All formal written Notices shall be: (i) hand delivered; (ii) deposited in the mail, properly stamped with the required postage; (iii) sent via registered or certified mail; or (iv) sent via recognized overnight courier service. The Parties' addresses for purposes of Notice shall be as set forth below:

If to Company: _____ _____ _____ Attn: _____ Telephone: _____	If to Consultant: _____ _____ _____ Attn: _____ Telephone: _____
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Either Party may change the name or address of the designated recipient of Notices by delivery of a Notice of such change as provided for in this Article.

ARTICLE 12. EXAMINATION OF WORK AND PROGRESS REPORTS

Consultant shall submit periodic progress reports as requested by Company. Company, its agents or representatives may visit Consultant's office at any reasonable time to determine the status of ongoing Work required by this Contract.

All Work will be subject to examination at any reasonable time or times by Company, which shall have the right to reject unsatisfactory Work. Neither examination of Work nor the lack of same nor acceptance of the Work by Company nor payment therefor shall relieve Consultant from any of its obligations under this Contract.

ARTICLE 13. PROFESSIONAL RESPONSIBILITY

Consultant shall perform the Work in accordance with the Scope of Work and using the standards of care, skill, and diligence normally provided by a professional in the performance of similar Services, and shall comply with all laws, codes and standards applicable to the Work.

In the event of Consultant's failure to do so, Consultant shall, upon Notice by Company, promptly reperform the Work and correct the defect at Consultant's sole cost. Consultant's obligation to correct and reperform its Work shall be in addition to, and not in lieu of, any other right that Company may have.

ARTICLE 14. CHANGES

Company may at any time in writing direct changes and/or additions within the general scope of this Contract or direct the omission of or variation in Work. If any such direction results in a material change in the amount or character of the Work, an equitable adjustment in the Contract price and/or other such provisions of this Contract as may be affected shall be made and this Contract shall be modified in writing accordingly. Any claim by Consultant for an adjustment under this Article shall be processed in accordance with the provisions of ARTICLE 29. CLAIM NOTICE AND RESOLUTION PROCEDURE.

No change shall be binding upon Company until a change order is executed by an authorized representative of Company which expressly states that it constitutes a change order to this Contract. The issuance of information, advice, approvals, or instructions by anyone other than the authorized Company representative shall not constitute an authorized change order pursuant to this Article.

ARTICLE 15. INSURANCE

Without limiting any liabilities or any other obligations of Consultant, Consultant shall, prior to commencing Work, secure and continuously carry with insurers having an A.M. Best Insurance Reports rating of A-VII or better such insurance as will protect

Consultant from liability and claims for injuries and damages which may arise out of or result from Consultant's operations under the Contract and for which Consultant may be legally liable, whether such operations are by Consultant or a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. Consultant shall insure the risks associated with the Work and this Contract with minimum coverages and limits as set forth below:

Workers' Compensation. Consultant shall comply with all applicable workers' compensation laws and shall furnish proof thereof satisfactory to Company prior to commencing Work. If Work is to be performed in Washington or Wyoming, Consultant will participate in the appropriate state fund(s) to cover all eligible employees and provide a stop gap (employer's liability) endorsement. Coverage should also provide applicable federal regulations (including, without limitation, FELA, USL&H and the Jones Act).

Employers' Liability. Consultant shall maintain employers' liability insurance with limits not less than \$1,000,000 each accident, \$1,000,000 disease each employee, and \$1,000,000 disease policy limit.

Commercial General Liability. Consultant shall maintain commercial general liability insurance on the most recently approved ISO policy form, or its equivalent, written on an occurrence basis, with limits not less than \$1,000,000 per occurrence/\$2,000,000 general aggregate (on a per location and/or per job basis) and shall include the following coverages:

- a. Premises and operations coverage
- b. Independent contractor's coverage
- c. Contractual liability
- d. Products and completed operations coverage, maintained for at least **2 years** for post-completion losses
- e. Broad form property damage liability
- f. Personal and advertising injury liability, with the contractual exclusion removed
- g. Sudden and accidental pollution liability, as applicable

Business Automobile Liability. Consultant shall maintain business automobile liability insurance on the most recently approved ISO policy form, or its equivalent, with a minimum single limit of \$1,000,000 each accident for bodily injury and property damage including sudden and accidental pollution liability, with respect to Consultant's vehicles whether owned, hired or non-owned, assigned to or used in the performance of the Work.

Professional Liability. Consultant shall maintain professional liability insurance covering damages arising out of negligent acts, errors, or omissions committed by Consultant in the performance of this Contract, with a liability limit of not less than \$1,000,000 each claim. Consultant shall maintain this policy for a minimum of two (2) years after completion of the Work or shall arrange for a two (2) year extended discovery (tail) provision if the policy is not renewed. The intent of this policy is to provide coverage for claims arising out of the performance of Work or Services under this Contract and caused by any error, omission for which the Consultant is held liable.

Umbrella or Excess Liability. Consultant shall maintain umbrella or excess liability insurance with a minimum limit of \$5,000,000 each occurrence/aggregate where applicable on a following form basis to be excess of the insurance coverage and limits required in employers' liability insurance, commercial general liability insurance and business automobile liability insurance above. Consultant shall provide Notice to Company, if at any time the full umbrella limit required under this Contract is not available, and will purchase additional limits, if requested by Company.

Company does not represent that the insurance coverages specified herein (whether in scope of coverage or amounts of coverage) are adequate to protect the obligations of Consultant, and Consultant shall be solely responsible for any deficiencies thereof.

Except for workers' compensation and professional liability insurance, the policies required herein shall include provisions or endorsements naming Company, its parent, divisions, affiliates, subsidiary companies, co-lessees, co-venturers, officers, directors, agents, employees, servants and insurers as additional insureds or loss payees, as applicable to specific insurance coverage. The commercial general liability additional insured endorsement shall be ISO Form CG 20 10 or its equivalent.

To the extent of Consultant's negligent acts or omissions, all policies required by this Contract shall include: (i) provisions that such insurance is primary insurance with respect to the interests of Company and that any other insurance maintained by Company (including self-insurance) is excess and not contributory insurance with the insurance required hereunder; and (ii) provisions that the policy contain a cross liability or severability of interest clause or endorsement in the commercial general liability and automobile liability coverage. Unless prohibited by applicable law, all required insurance policies (except professional liability) shall contain provisions that the insurer will have no right of recovery or subrogation against Company, its parent, divisions, affiliates, subsidiary companies, co-lessees or co-venturers, agents, directors, officers, employees, servants,

and insurers, it being the intention of the Parties that the insurance as effected shall protect all of the above-referenced entities evidenced by waiver of subrogation wording.

A certificate of insurance shall be furnished to Company confirming the issuance of such insurance prior to commencement of Work by Consultant. Should a loss arise during the term of the Contract that may give rise to a claim against Consultant and/or Company as an additional insured, Consultant shall deliver to Company (or cause to be delivered to Company) certified copies of such insurance policies. Consultant shall not cancel or reduce limits of liability without (i) ten (10) calendar days prior written Notice to Company if canceled for nonpayment of premium; or (ii) thirty (30) calendar days prior written Notice to Company if canceled for any other reason. Lack of notification shall be considered a material breach of this Contract.

Consultant shall require Subcontractors who perform Work at the Work Site to carry liability insurance (auto, commercial general liability and excess) and workers' compensation/employer's liability insurance commensurate with their respective scopes of work. Consultant shall remain responsible for any claims, lawsuits, losses and expenses included defense costs that exceed any of its Subcontractors' insurance limits or for uninsured claims or losses.

ARTICLE 16. INDEMNIFICATION

Consultant specifically and expressly agrees to indemnify, defend, and hold harmless Company and its officers, directors, employees and agents (hereinafter collectively "Indemnitees") against and from any and all claims, demands, suits, losses, costs and damages of every kind and description, including attorneys' fees and/or litigation expenses, brought or made against or incurred by any of the Indemnitees resulting from or arising out of the acts, errors or omissions of Consultant, its employees, agents, representatives or Subcontractors of any tier, their employees, agents or representatives in the performance or nonperformance of Consultant's obligations under this Contract or in any way related to this Contract. The indemnity obligations under this Article shall include without limitation:

- a. Loss of or damage to any property of Company, Consultant or any third party;
- b. Bodily injury to, or death of any person(s), including without limitation employees of Company, or of Consultant or its Subcontractors of any tier; and
- c. Claims arising out of workers' compensation, unemployment compensation, or similar such laws or obligations applicable to employees of Consultant or its Subcontractors of any tier.

Consultant's indemnity obligations owing to Indemnitees under this Article are not limited by any applicable insurance coverage identified in ARTICLE 15. INSURANCE. Consultant's indemnity obligation under this Article shall not extend to any liability caused by the sole negligence of any of the Indemnitees.

For Work performed in the States of Oregon and Washington, Consultant's indemnity obligations under this Article shall extend only to liability for damage arising out of death or bodily injury to persons or damage to property to the extent that the death or bodily injury to persons or damage to property arises out of the fault of Consultant, or the fault of Consultant's agents, representatives or Subcontractors.

To the extent applicable, Consultant specifically and expressly waives any immunity under either Industrial Insurance, Title 51, RCW, or Workers' Compensation Law, Chapter 656, ORS, and acknowledges that this waiver was mutually negotiated by the Parties herein.

The invalidity, in whole or in part, of any of the foregoing paragraphs will not affect the remainder of such paragraph or any other paragraphs in this Article.

ARTICLE 17. CHANGES IN PERSONNEL

Prior to: (i) changing or replacing any "key" Personnel, as identified in this Contract or in Consultant's proposal for the Work; or (ii) changing any classification, grade or rate of any Personnel working on the Contract, Consultant shall notify Company of the proposed replacement/change before executing such replacement/change, and obtain Company's prior written approval to such replacement/change. Any replacement Personnel shall have the capabilities equivalent to or better than the person replaced. If Consultant replaces or changes the classification, grade or rate of any person for performance of the Work described in the Contract, without the express approval of Company, then Consultant shall bear all costs associated with any and all such replacements and changes, and said costs shall not be reimbursable from Company.

ARTICLE 18. CONSULTANT'S PERSONNEL; DRUGS, ALCOHOL AND FIREARMS

Consultant shall employ in the performance of the Work only persons qualified for the same. Consultant shall at all times enforce strict discipline and good order among its employees and the employees of any Subcontractor of any tier. Consultant shall not permit or allow the introduction or use of any firearms, illegal drugs or intoxicating liquor upon the Work Site under this Contract, or upon any of the grounds occupied, controlled, or used by Consultant in the performance of the Work. Consultant shall immediately remove from the Work, whenever requested by Company, any person considered by Company to be incompetent, insubordinate, careless, disorderly, in violation of the above restriction on firearms, illegal drugs or intoxicating liquor, or under the influence of illegal drugs or intoxicating liquor, and such person shall not again be employed in the performance of the Work herein without the consent of Company.

ARTICLE 19. ACCESS TO COMPANY'S FACILITIES**19.1 Requirements for Unescorted Personnel and Sensitive Personnel**

Access to Company controlled areas is granted on an as-needed basis only in accordance with Company's internal badge and access policy. Additionally, Company is required to comply with certain of NERC's federally mandated critical infrastructure protection standards (CIPS) adopted to ensure that electric utilities, as part of the nation's critical infrastructure, are able to sustain and secure against vulnerabilities that may threaten the bulk electric system and the utilities that operate it. Company shall specify in the Scope of Work whether or not the Work under this Contract requires either: (i) authorized unescorted physical access to Company's Facilities (*i.e.*, use of Unescorted Personnel); or (ii) authorized unescorted physical access or authorized cyber access to Company's CIPS Covered Assets (*i.e.*, use of Sensitive Personnel). For all Personnel who require either such access, Consultant shall:

- a. Conduct, at Consultant's cost and expense, a Personnel risk assessment to include at a minimum an identity verification and seven-year criminal background check for the current residence and past locations of residence of all Unescorted Personnel and Sensitive Personnel. All background checks will be conducted in accordance with federal, state, provincial and local laws, and subject to existing collective bargaining unit agreements or other agreements, if any. A background check completed within two (2) years prior to the date the Consultant signed a Contractor/Vendor Information Form for each such person will be considered valid. Following the initial background check, updates shall be performed no less frequently than every seven (7) years or upon request by Company. In the event Company notifies Consultant of impending expiration of the background check of any Unescorted Personnel or Sensitive Personnel, Consultant shall provide an updated Contractor/Vendor Information Form reflecting a refreshed background check within twenty (20) days of receipt of the Notice in order to avoid revocation of such person's access. An appropriate authorization form must be signed by each of the Unescorted Personnel and Sensitive Personnel prior to a background check being conducted, acknowledging that the background check is being conducted and authorizing the information obtained to be provided to Company;
- b. Ensure that Unescorted Personnel and Sensitive Personnel have passed the background checks outlined in subsection 19.1(a) prior to requesting unescorted physical access and/or cyber access to Company's Facilities and/or CIPS Covered Assets, as applicable. In the event any such person: (i) is currently under indictment for a crime punishable by imprisonment for a term exceeding one year; (ii) has been convicted (within the past seven years) in any court of a crime punishable by imprisonment for a term exceeding one year; (iii) is currently a fugitive of justice; or (iv) is an alien illegally or unlawfully in the United States, such person shall be considered a "restricted person" and may not be Unescorted Personnel or Sensitive Personnel without prior written consent from Company. In the event any such person's background check reveals any residency gap of six (6) consecutive months or more, Contractor shall review, evaluate, and document any such residency gap to ensure that it does not pose a risk to Company's CIPS Covered Assets, prior to making a determination that Unescorted Personnel and Sensitive Personnel have passed the background check;
- c. Ensure that Unescorted Personnel and Sensitive Personnel complete Company provided or approved initial CIPS and Standards of Conduct compliance training prior to requesting unescorted physical access and/or cyber access to Company's Facilities and/or CIPS Covered Assets, as applicable;
- d. Ensure that Unescorted Personnel and Sensitive Personnel have passed Consultant's drug and alcohol exam and are in compliance with Consultant's substance abuse/drug and alcohol policy as outlined in ARTICLE 20. SUBSTANCE ABUSE; DRUG AND ALCOHOL POLICY; and

- e. Keep accurate and detailed documentation to confirm completion dates for background checks and all CIPS and Standards of Conduct compliance training (initial and annual training, to the extent applicable), and certify to Company such documentation by completing a Contractor/Vendor Information Form, attached hereto as Exhibit A, Appendix 1, for each Unescorted Personnel or Sensitive Personnel. Company has the right to audit Consultant's records supporting each Contractor/Vendor Information Form submitted to Company and to verify that the requisite background checks and CIPS and Standards of Conduct compliance training were performed. Consultant shall provide Company with all requested records supporting Contractor/Vendor Information forms within a reasonable time after receiving such a request, and in the form requested by Company, but not longer than three (3) business days following the date of such request.

Consultant shall not allow any Unescorted Personnel or Sensitive Personnel who have not met the foregoing requirements of this subsection 19.1 to perform Work, unless Consultant has received prior written consent from Company.

19.2 Additional Access Requirements Specific to Sensitive Personnel

In addition to the access requirements outlined in subsection 19.1, with respect to all Sensitive Personnel, Consultant also shall:

- a. Ensure that Sensitive Personnel (and any Personnel with access to BCSI) are informed of and comply with Company's BCSI requirements contained in any confidentiality agreement previously executed by Consultant as well as the BCSI requirements set forth herein in ARTICLE 37. CONFIDENTIAL INFORMATION; NONDISCLOSURE;
- b. In addition to the initial CIPS and Standards of Conduct compliance training requirement outlined in subsection 19.1(c), ensure that Sensitive Personnel complete annual Company provided or approved CIPS compliance training within Company's prescribed training window; and
- c. Immediately upon either (i) Sensitive Personnel termination actions or (ii) all other changes in the status of Sensitive Personnel who no longer require access, report such termination or change in status to the Company's Enterprise Service Desk (ESD). The ESD is available 24 hours a day by calling either (503) 813-5555 or (801) 220-5555.

Consultant shall not allow any Sensitive Personnel who have not met the foregoing requirements of this subsection 19.2 to perform Work, unless Consultant has received prior written consent from Company.

ARTICLE 20. SUBSTANCE ABUSE; DRUG AND ALCOHOL POLICY

- a. Consultant shall have and ensure compliance with a substance abuse/drug and alcohol policy that complies with all applicable federal, state and/or local statutes or regulations. Consultant shall subject each of the Personnel to a drug test at Consultant's sole cost and expense. Such drug test shall, at a minimum, be a five (5) Panel Drug Test, which should be recognizable at testing labs as a "SamHSA5 panel at 50NG – THC cut-off".
- b. For any Personnel who have had a recent drug test, such recent drug test shall be documented pursuant to the previous Article. Consultant warrants that Consultant and the Personnel are in compliance with Consultant's substance abuse/drug and alcohol policy.
- c. During the course of Work performed under this Contract, Consultant shall keep accurate and detailed documentation of its drug policy and Personnel drug tests, which it shall submit to Company upon request.
- d. Consultant shall designate one person to be responsible for compliance with the requirements of this Article and all reporting and inquiries shall be made to a duly authorized representative of Company in a timely manner.

ARTICLE 21. DEPARTMENT OF TRANSPORTATION

Consultant shall ensure Department of Transportation compliance, including but not limited to valid driver's license, equipment inspections, hours of service and all appropriate documentation for any Personnel who may drive while on assignment to Company.

ARTICLE 22. BUSINESS ETHICS

Consultant, its employees, officers, agents, representatives and Subcontractors shall at all times maintain the highest ethical standards and avoid conflicts of interest in the performance of Consultant's obligations under this Contract. In conjunction with its performance of the Work, Consultant and its employees, officers, agents and representatives shall comply with, and cause its Subcontractors and their respective employees, officers, agents and representatives to comply with, all applicable laws, statutes, regulations and other requirements prohibiting bribery, corruption, kick-backs or similar unethical practices including, without limitation, the United States Foreign Corrupt Practices Act, the United Kingdom Bribery Act 2010, and the Company Code of Business Conduct. Without limiting the generality of the foregoing, Consultant specifically represents and warrants that

neither Consultant nor any Subcontractor employees, officers, representatives or other agents of Consultant have made or will make any payment, or have given or will give anything of value, in either case to any government official (including any officer or employee of any governmental authority) to influence his, her, or its decision or to gain any other advantage for Company or Consultant in connection with the Work to be performed hereunder. Consultant shall maintain and cause to be maintained effective accounting procedures and internal controls necessary to record all expenditures in connection with this Contract and to verify Consultant's compliance with this Article. Company shall be permitted to audit such records as reasonably necessary to confirm Consultant's compliance with this Article. Consultant shall immediately provide notice to Company of any facts, circumstances or allegations that constitute or might constitute a breach of this Article and shall cooperate with Company's subsequent investigation of such matters. Consultant shall indemnify and hold Company harmless from all fines, penalties, expenses or other losses sustained by Company as a result of Consultant's breach of this provision. The Parties specifically acknowledge that Consultant's failure to comply with the requirements of this Article shall constitute a condition of default under this Contract.

ARTICLE 23. REVIEW OF DELIVERABLES

Review by Company of any Deliverables submitted by Consultant shall be solely for the benefit of Company and shall not relieve Consultant of its responsibility to comply with all requirements of the Contract and for the accuracy of the Deliverables.

ARTICLE 24. SAFETY AND SITE REGULATIONS

Consultant shall be solely responsible for being aware of and initiating, maintaining, and supervising compliance with all safety laws, regulations, precautions, and programs in connection with the performance of this Contract. Consultant shall, also make itself aware of and adhere to all applicable Company Work Site regulations including, without limitation, environmental protection, loss control, dust control, safety, and security. As a continuing condition to performing Work at any Work Site, Consultant may be required to maintain a subscription with Company's third-party safety and loss information reporting service (the "Administrator"). The Administrator manages safety ratings and insurance certificates of Company's contractors. Consultant will provide safety related information as requested by the Administrator including Consultant's safety programs, OSHA documents, experience modification rates (EMR) and an insurance and safety questionnaire. A variance or exclusion to the subscription and information requirements under this paragraph may be granted by the Company's Designated Representative.

ARTICLE 25. PROGRESS MEETINGS

Company will conduct weekly, or at other regular intervals as agreed by both Parties, meetings with Consultant to discuss the performance of the Work.

ARTICLE 26. COOPERATION WITH OTHERS

Consultant shall fully cooperate and coordinate with Company employees and other contractors who may be awarded other work. Consultant shall not commit or permit any act which will interfere with the performance of work by Company employees or other contractors.

ARTICLE 27. LIENS

Consultant shall: (i) indemnify, defend, and hold harmless Company from all laborers', materialmen's, and mechanics' liens, or claims made or filed upon the Work Site or other Company property on account of any Work or Service performed or furnished by Consultant's Subcontractors of any tier in connection with the Work (including any liens or claims based on the failure or alleged failure to maintain a payment bond); and (ii) keep Company property free and clear of all liens or claims arising from the performance of any Work covered by this Contract by Consultant or its Subcontractors of any tier. If any lien arising out of this Contract is filed before or after Work is completed, Consultant, within ten (10) calendar days after receiving from Company written Notice of such lien, shall obtain release of or otherwise satisfy such lien. If Consultant fails to do so, Company may take such steps and make such expenditures as in its discretion it deems advisable to obtain release of or otherwise satisfy any such lien or liens, and Consultant shall upon demand reimburse Company for all costs incurred and expenditures made by Company in obtaining such release or satisfaction. If any non-payment claim is made directly against Company arising out of non-payment to any Subcontractor (including any liens or claims based on the failure or alleged failure to maintain a payment bond), Consultant shall assume the defense of such claim within ten (10) calendar days after receiving from Company written Notice of such claim. If Consultant fails to do so, Consultant shall upon demand reimburse Company for all costs incurred and expenditures made by Company to satisfy such claim.

Consultant's obligation to indemnify, defend, and hold harmless Company from liens shall not in any way be rendered unenforceable, or altered, amended, eliminated or otherwise conditioned by any laws and regulations related to processing such liens. Company shall have no obligation to deliver a copy of any notice of claim or right to a lien to Consultant or any other person or entity.

ARTICLE 28. CONFLICTS, ERRORS, OMISSIONS, OR DISCREPANCIES IN CONTRACT DOCUMENTS

Consultant shall advise Company in writing of all conflicts, errors, omissions, or discrepancies among the various documents comprising this Contract immediately upon discovery and prior to Consultant's performing the affected Work. Company shall resolve such conflicts and such resolution shall be final. Anything mentioned in the specifications and not shown on the drawings, or shown on the drawings and not mentioned in the specifications, shall be considered as if shown or mentioned in both.

ARTICLE 29. CLAIM NOTICE AND RESOLUTION PROCEDURE

In the event Consultant has a claim or request for a time extension, additional compensation, any other adjustment of the Contract terms, or any dispute arising under the Contract (hereinafter "Claim"), Consultant shall provide Company with Notice of such Claim within five (5) business days following the occurrence of the event giving rise to the Claim. Consultant's failure to give Notice as required will constitute a waiver of all of Consultant's rights with respect to the Claim.

As soon as practicable after Claim notification, Consultant shall submit the Claim to Company with all supporting information and documentation. Consultant shall also respond promptly to all Company inquiries about the Claim and its basis.

Any Claim that is not disposed of by mutual agreement between the Parties shall be decided by Company, which shall provide a written decision to Consultant. Such decision shall be final unless Consultant, within thirty (30) days after such receipt of Company's decision, provides to Company a written protest, stating clearly and in detail the basis thereof. Consultant's failure to protest Company's decision within that time period shall constitute a waiver by Consultant of its right to dispute the decision. Even if a Claim arises, Consultant shall continue its performance of this Contract.

ARTICLE 30. SUSPENSION OF WORK

Company may, by written Notice, direct Consultant to suspend performance of any or all of the Work for a specified period of time. Upon receipt of such Notice to suspend, Consultant shall: (i) discontinue Work; (ii) place no further orders or subcontracts; (iii) suspend all orders and subcontracts; (iv) protect and maintain the Work; and (v) otherwise mitigate Company's costs and liabilities for those areas of Work suspended. Company shall pay Consultant an equitable amount for incremental costs incurred by Consultant as a result of the suspension and equitably extend any guaranteed completion dates to the extent such suspension adversely impacts Consultant's critical path to completion; provided, however, that if the suspension is due to Consultant's failure to comply with the Contract, no such payment shall be made or extension granted.

ARTICLE 31. TERMINATION FOR CONVENIENCE

Company may terminate this Contract in whole or in part at any time without cause prior to its completion by sending to Consultant written Notice of such termination. Upon such termination, Company shall pay to Consultant, in full satisfaction and discharge of all liabilities and obligations owed Consultant, an equitable amount for all Work satisfactorily performed by Consultant as of the date of termination, plus an equitable termination fee to address Subcontractor termination charges and other reasonable out-of-pocket costs demonstrably incurred by Consultant as the result of the termination provided that such costs cannot be reasonably mitigated. Company shall not be liable for anticipated profits, costs or overhead based upon Work not yet performed as of the date of termination.

ARTICLE 32. TERMINATION FOR CAUSE

1. For purposes of this Contract, a default by Consultant shall be the occurrence of any of the following:
 - a. A breach by Consultant of any of its material obligations under the Contract, if such breach continues uncured for a period of seven (7) days after receipt of Notice from Company, unless Company agrees, in writing, to grant Consultant an extension of such seven (7) day period for a period of time to be determined at Company's sole discretion. In such circumstance, Company shall prescribe the new cure period in writing. For purposes of the Contract, a default by Consultant shall be deemed to include, without limitation, Consultant's refusal or neglect to supply sufficient and properly skilled Personnel, materials or Deliverables of the proper quality or quantity, or equipment necessary to perform the Work or Services described in the Contract properly, or Consultant's failure in any respect to prosecute the Work or Services described in the Contract or any part thereof with promptness, diligence and in accordance with all of the material provisions hereof;

- b. Consultant fails in any material respect to comply with any laws, ordinances or regulations pertaining to safety or environmental compliance;
 - c. A determination that any representation, statement or warranty made by Consultant in this Contract or any other statement, report or document which Consultant is required to furnish to Company, was false or misleading in any material respect;
 - d. The occurrence of any of the following: (i) the filing by or against Consultant of a proceeding under any bankruptcy or similar law, unless such proceeding is dismissed within thirty (30) calendar days from the date of filing; (ii) the making by Consultant of any assignment for the benefit of creditors; (iii) the filing by or against Consultant for a proceeding for dissolution or liquidation, unless such proceeding is dismissed within thirty (30) calendar days from the date of filing; (iv) the appointment of or the application for the appointment of a receiver, trustee, or custodian for any material part of Consultant's assets unless such appointment is revoked or dismissed within thirty (30) calendar days from the date thereof; (v) the attempt by Consultant to make any adjustment, settlement, or extension of its debts with its creditors generally; (vi) the insolvency of Consultant or; (vii) the filing or recording of a notice of lien or the issuance or the obtaining of a levy of execution upon or against a material portion of Consultant's assets, unless such lien or levy of execution is dissolved within thirty (30) calendar days from the date thereof; or
 - e. A Material Adverse Change has occurred with respect to Consultant and Consultant fails to provide such performance assurances as are reasonably requested by Company, including without limitation the posting of Default Security pursuant to ARTICLE 9. SECURITY.
2. Upon the occurrence of any such default, following the applicable process described in this Article, Company shall be entitled upon written Notice to Consultant and without notice to Consultant's sureties and without limiting any of Company's other rights or remedies, to terminate this Contract or Consultant's right to proceed with that portion of the Work affected by any such default and collect the Net Replacement Costs incurred to complete the Work.
 3. Upon the occurrence of any such default, Company shall be entitled to make one or more draws against any Default Security as may be provided by Consultant hereunder.
 4. Upon the occurrence of any such default, Company shall be entitled to pursue any and all other rights and remedies that it may have against Consultant under this Contract or at law or in equity.
 5. In the event of a full or partial termination under this Article, Company may, for the purpose of completing the Work or enforcing these provisions, take possession of all completed and in-process Deliverables use them or may finish the Work by whatever method it may deem expedient including: (i) Company may hire a replacement contractor or contractors to complete the remaining Work that Consultant was otherwise obligated to complete under the Contract using such form of agreement as Company may deem advisable; or (ii) Company may itself provide any labor or materials to complete the Work.
 6. All rights and remedies provided in this Article are cumulative, and are not exclusive of any other rights or remedies that may be available, whether provided by law, equity, statute, in any other agreement between the Parties or otherwise. Upon the occurrence of any such default, following the applicable process described in this Article, Company shall be entitled to pursue any and all other rights and remedies, including without limitation damages, that Company may have against Consultant under this Contract or at law or in equity.

ARTICLE 33. DELAYS

Force Majeure. Neither Party shall be liable for delays caused by a Force Majeure Event; provided, however, that both Parties agree to seek to mitigate the potential impact of any such delay. Any delay attributable to a Force Majeure Event shall not be the basis for a request for additional compensation. In the event of any such delay, the required completion date(s) may be extended for a reasonable period not exceeding the time actually lost by reason of the Force Majeure Event.

Company-Caused Delay. If Consultant is actually delayed in its performance of the Work by the actions or omissions of Company (excluding the Company's good faith exercise of rights and remedies provided under the Contract), or by changes ordered with respect to the Work, and if Consultant is able to prove that it has used all reasonable means to avoid or minimize the effects of the delay, then, as Consultant's sole remedy, Consultant's guaranteed completion dates shall be equitably adjusted to reflect the impacts of such Company-caused delays. No adjustment under this Article shall be made for any delay to the extent that it is caused or contributed to by Consultant or performance would have otherwise been delayed by any other cause, including the fault or negligence of Consultant. Company may determine whether Consultant has met its burden described in this Article

either before or after the completion deadline. If before the completion deadline, Company determines Consultant has met its burden as described in this Article, then Company may issue a written change order to extend the schedule. If after the completion deadline, Company determines Consultant has met its burden described in this Article, then Company may extend the completion deadline and thereby relieve Consultant of the obligation to pay liquidated damages.

Consultant-Caused Delays. Any Work that is not delivered in accordance with the Scope of Work may constitute a default to the extent set forth in the terms and conditions of this Contract, provided that the delay is not related to either a Force Majeure Event or Company-caused delay.

Request For Time Extension. Any request for time extension shall be made in accordance with ARTICLE 29. CLAIM NOTICE AND RESOLUTION PROCEDURE.

ARTICLE 34. COMPLIANCE WITH LAWS

Consultant shall at all times comply with all laws, statutes, regulations, rules, executive orders, ordinances, codes, and standards applicable to Consultant's performance of the Work including, without limitation, those governing health and safety, wages, hours, employment of minors, desegregation and employment discrimination, as each may be applicable to the Work performed hereunder, and based on total anticipated dollar value of this Contract. Consultant further confirms that its employees and the employees of all Subcontractors employed under the Contract may legally work in the United States.

Without limiting the generality of the foregoing, Consultant and any Subcontractors shall abide by the requirements of 41 CFR §§60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity, national origin or discussion of compensation. Moreover, these regulations require that covered prime contractors and Subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, protected veteran status or disability. Consultant and any Subcontractors shall also abide by the requirements of Executive Order 11246, as amended, to develop and maintain a written affirmative action program (AAP) and Executive Orders 11625 and 13170 (utilization of disadvantaged business enterprises) and the Small Business Act. To the extent applicable, the employee notice requirements set forth in 29 CFR Part 471, Appendix A to Subpart A, are hereby incorporated by reference into this Contract.

Consultant shall indemnify, defend and hold harmless Company, its directors, officers, employees and agents from all losses, costs and damages by reason of any violation thereof and from any liability, including without limitation fines, penalties and other costs arising out of Consultant's failure to so comply.

ARTICLE 35. INDEPENDENT CONTRACTOR

Consultant is an independent contractor and all persons employed by Consultant in connection herewith shall be employees of Consultant and not employees of Company in any respect. Consultant shall maintain complete control over Consultant's employees and Subcontractors.

ARTICLE 36. RELEASE OF INFORMATION; ADVERTISING AND PROMOTION

Consultant shall not publish, release, disclose, or announce to any member of the public, press, official body, or any other third party any information concerning this Contract and/or the Work, or any part thereof, without the express prior written consent of Company, except as required by law. Neither the names of Company, nor the Work Site shall be used in any advertising or other promotional context by Consultant without the express prior written consent of Company.

ARTICLE 37. CONFIDENTIAL INFORMATION; NONDISCLOSURE

Definition of Confidential Information. The term "Confidential Information" means: (i) proprietary information of Company; (ii) information marked or designated by Company as confidential; (iii) BES Cyber System Information of Company; (iv) information, whether or not in written form and whether or not designated as confidential, which is known to Consultant as being treated by Company as confidential; (v) information provided to Company by third parties which Company is obligated to keep confidential (including but not limited to information relating to an identified or identifiable natural person, whether or not such information is publicly available); and (vi) information developed by Consultant in connection with the performance of this Contract.

BES Cyber System Information. Confidential Information of Company labeled as BCSI shall be protected consistent with the following requirements: (a) BCSI shall be protected at all times, either by appropriate storage or having it under the personal

observation and control of a person authorized to receive it; (b) each person who works with protected BCSI is personally responsible for taking proper precautions to ensure that unauthorized persons do not gain access to it; (c) reasonable steps shall be taken to minimize the risks of access to BCSI by unauthorized personnel (when not in use, BCSI shall be secured in a secure container, such as a locked desk, file cabinet or facility where security is provided); (d) documents or material containing BCSI may be reproduced to the minimum extent necessary, consistent with the need to carry out the Work, provided that the reproduced material is marked and protected in the same manner as the original material; (e) material containing BCSI should be disposed of through secured shredding receptacles or other secured document destruction methods; (f) BCSI shall be transmitted only by the following means: (i) hand delivery; (ii) United States first class, express, certified or registered mail, bonded courier, or through secure electronic means; (iii) e-mail with encrypted file (such as, WinZip with password) (the password should not be included in e-mail, but should be delivered by phone or in an unrelated e-mail not mentioning the document name; password-protected Microsoft Office documents do not meet the encryption requirements); and (g) documents or material containing BCSI shall be returned to Company or certified destroyed upon completion of the Work.

Nondisclosure. Consultant agrees that it will not disclose Confidential Information, directly or indirectly, under any circumstances or by any means, to any third person without the express written consent of Company.

Nonuse. Consultant further agrees that it will not use Confidential Information except as may be necessary to perform the Work called for by this Contract.

Protection. Confidential Information will be made available by Consultant to its employees only on a “need to know” basis and only after notifying such employees of the confidential nature of the information and after having obligated them to the nonuse and nondisclosure obligations of this Contract. Consultant agrees to take all reasonable precautions to protect the confidentiality of Confidential Information and, upon request by Company, to return to Company any documents which contain or reflect such Confidential Information.

Federal Defend Trade Secrets Act. The Federal Defend Trade Secrets Act of 2016 provides immunity from civil or criminal liability for any employee or contractor who discloses a trade secret “in confidence to a Federal, State, or local government official, either directly or indirectly, or to an attorney” where the disclosure by the employee or contractor is “solely for the purpose of reporting or investigating a suspected violation of law” or “is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal.” 18 U.S.C. § 1833(b). Nothing in this Contract is intended to conflict with 18 U.S.C. § 1833(b) or create liability for disclosures of trade secrets that are expressly allowed by 18 U.S.C. § 1833(b).

Unless waived by Company, Consultant shall require its employees and Subcontractors of any tier to adhere to these confidential information and nondisclosure terms.

ARTICLE 38. OWNERSHIP OF DESIGNS, DRAWINGS AND WORK PRODUCT

The Deliverables prepared or developed hereunder, or other documents or information provided to Company, by Consultant or its employees or agents, or Subcontractors or their employees or agents, including without limitation drawings, specifications, manuals, calculations, maps, sketches, designs, tracings, notes, reports, data, computer programs, models and samples, shall become the physical property of Company when prepared and, to the extent subject to protection under copyright laws, shall constitute “work made for hire” and shall become the intellectual property of Company, without regard to any markings that may denote a confidential or proprietary interest of Consultant in the said items. To the extent the Deliverables incorporate pre-existing intellectual property of Consultant or of any third party (“Pre-Existing Property”), Consultant hereby grants Company a perpetual, fully paid, transferable right to use, copy and modify such Pre-Existing Property for the purpose of Company’s operation, administration, maintenance, modification, improvement and replacement of the Company’s assets the fullest extent necessary to accomplish those purposes. Such license includes the right of Company to share Pre-Existing Property to Company’s contractors, agent, officers, directors, employees, joint owners, affiliates and consultants for the foregoing purposes, without regard to any markings that may denote a confidential or proprietary interest in the said items. Consultant hereby represents, warrants and covenants that it holds all requisite rights and third party consents necessary to grant the foregoing license without infringing the rights of any third party. Consultant shall deliver all Deliverables, together with any documents or information furnished to Consultant and its employees or agents by Company hereunder, upon Company’s request and, in any event, upon termination or final acceptance of the Work.

ARTICLE 39. PATENT AND COPYRIGHT INDEMNITY

Consultant shall indemnify, defend, and hold harmless Company, its directors, officers, employees, and agents against and from all claims, losses, costs, suits, judgments, damages, and expenses, including attorneys’ fees, of any kind or nature whatsoever on account of infringement of any patent, copyrighted or uncopyrighted work, including claims thereof pertaining to or arising from Consultant’s performance under this Contract. If notified promptly in writing and given authority, information, and assistance,

and contingent upon Company not taking any position adverse to Consultant in connection with such claim, Consultant shall defend, or may settle at its expense, any suit or proceeding against Company so far as based on a claimed infringement which would result in a breach of this warranty, and Consultant shall pay all damages and costs awarded therein against Company due to such breach.

In case any Service or Deliverable is in such suit held to constitute such an infringement and the use of said Service or Deliverable is enjoined, Consultant shall, at its expense and through mutual agreement between Company and Consultant, either procure for Company the right to continue using said Service or Deliverable, or replace same with a non-infringing Service or Deliverable, or modify same so it becomes non-infringing.

ARTICLE 40. CYBER SECURITY

I. OBJECTIVE AND SCOPE OF THIS ARTICLE

Managing supply chain cyber security risk requires Company's contractors and suppliers to meet minimum obligations to maintain the integrity of Company's systems, facilities, and Confidential Information. This Cybersecurity Article ("Article") applies to any contractor or supplier (collectively, "Contractor" for purposes of this Article) (and its Personnel and Subcontractors) that may store, process, or have access to Company's information systems, networks, services, or applications, and may impact the integrity, availability, or confidentiality of Company's Confidential Information or systems for the term of the Contract.

II. DEFINED TERMS

"Confidential Information" shall have the meaning as defined in the Contract and in addition include any information that identifies an individual or customer of Company, including but not limited to customer account numbers, customer addresses, customer energy usage information, credit or bank account numbers, social security numbers, passport or driver's license numbers, or any information not otherwise classified as public information by Company.

"Data" shall mean any information, formulae, algorithms, or other content that the Company or the Company's employees, agents and end users upload, create or modify using any software provided pursuant to the Contract. Data also includes user identification information and metadata which may contain Data or from which the Company's Data may be ascertainable.

"Security Breach" shall mean any act or omission that compromises either the security, confidentiality, or integrity of Company's Confidential Information, Data, systems and facilities or Company's physical, technical, administrative or organizational safeguards and controls relating to the protection of Company's Confidential Information, Data, systems, and facilities.

Any capitalized terms not otherwise defined herein shall have the meaning in the Contract.

III. COMPLIANCE WITH INDUSTRY BEST PRACTICES AND STANDARDS

Without limiting Contractor's obligations elsewhere in this Article or the Contract, Contractor shall implement baseline security safeguards and controls to protect Company's Confidential Information, Data, and systems that are no less rigorous than accepted industry practices, specifically those set forth in the latest published version of (i) National Institute of Standards and Technology Special Publication 800-53, Recommended Security Controls for Federal Information Systems or (ii) ISO 27001-Information Security Management.

IV. INFORMATION AND SYSTEMS SECURITY PROGRAM

(a) Confidential Information. Contractor represents and warrants that its collection, access, use, storage, disposal, and disclosure of Company's Confidential Information and Data does and will comply with all applicable federal and state privacy and data protection laws, regulations, and directives. Contractor's safeguards shall include limiting access to Company systems and Confidential Information to Contractor's Personnel who have a "need to know" or otherwise access Company's systems and Confidential Information to enable Contractor to perform Work or Services under the Contract. Articles of the Contract, concerning (i) Contractor's Personnel and their access to Company's facilities and (ii) the handling of Confidential Information, respectively, shall apply to this Article as applicable. These provisions included herein apply to all Subcontractors to the extent and during such periods as they are in possession of Confidential Information or Data.

(b) Data and Information Security Program. Contractor shall develop a data and information security program that documents the policies, standards, and controls in use, including organizational, administrative, technical, and physical safeguards and standards. The data and information security program must be reasonably designed to achieve the objectives to:

- (i) ensure the confidentiality, availability, and integrity of Company's Confidential Information;

- (ii) protect against any anticipated threats or hazards to the confidentiality, availability, or integrity of such information; and
- (iii) protect against unauthorized access to or use of such information or information systems.

Contractor shall ensure that it produces and communicates a comprehensive, documented data and information security program to all Personnel with access to Company's Confidential Information, Data, and systems.

(c) Information Systems Acquisition, Development and Maintenance. Contractor shall utilize a comprehensive application security program to help ensure that applications are consistent with industry security requirements. This shall include full application compliance testing and software development reviews.

(d) Vulnerability Testing and Remediation. Contractor shall ensure systems are regularly scanned for compliance with industry security standards, and that any applicable detected vulnerabilities are remediated. Contractor shall ensure that application security vulnerabilities are assessed for business risk and impact, and have a vulnerability remediation plan.

(e) Secure System Configuration. Contractor shall establish, implement, and actively manage (track, report on, and correct) the security configuration of laptops, servers, and workstations using a rigorous configuration management and change control process in order to prevent attackers from exploiting vulnerable services and settings.

(f) System Patching. Contractor shall implement an effective software update management process to ensure the most relevant, up-to-date, approved patches are installed for all authorized software. This process shall also include weighing the benefit associated with installing a patch to resolve a vulnerability against other factors, including the potential impact to system stability.

(g) Security Review of Internal and External Applications. Contractor shall perform security reviews of applications developed internally, as well as third party applications that process, store or transmit data.

(h) Application Security Awareness Program Content. Contractor shall ensure that the content of its application security awareness program incorporates current and relevant security attacks and vulnerabilities mitigation.

(i) Disaster Recovery and Business Continuity. Contractor shall develop a comprehensive IT disaster recovery and business continuity program and plan that is accessible by Company, supported by contingency arrangements, and tested periodically.

(j) Remote Access. Contractor shall follow all applicable Company requirements for all remote access to Company resources and systems. To the extent Contractor's Personnel will have interactive remote access to Company's networks, systems or applications, such access must be performed on a secure connection. Contractor shall utilize multi-factor authentication (e.g., two-factor or token) to provide an additional level of security for Contractor's Personnel with such access. Contractor shall maintain an accurate record of Personnel or Subcontractors who will have remote access to Company resources and systems, and the country of origin of individual remote access, and Contractor shall name its personnel and Subcontractors given remote access to Company's systems. Company reserves the right to deny individual remote access connection at Company's sole discretion.

V. SECURITY OF CONFIDENTIAL INFORMATION AND DATA

(a) Any Confidential Information and Data provided by Company to Contractor (electronically or otherwise) and used by the Contractor directly or indirectly in the performance of this Contract shall remain at all times the confidential property of Company. Contractor shall not use Confidential Information or Data, and shall not permit any Subcontractor to use Confidential Information or Data, for any purpose other than the purpose of performing the Work or Services set forth in this Contract.

(b) During the term of the Contract, Contractor shall provide Company with Notice if Confidential Information or Data will be physically located outside the United States at least forty-eight (48) hours in advance.

(c) Contractor shall be responsible for preserving the integrity (i.e., completeness and accuracy) of, and preventing any unauthorized access, corruption, loss, damage and/or destruction to, Confidential Information or Data.

VI. OVERSIGHT OF COMPLIANCE

Company reserves the right to conduct an assessment, audit, examination, or review of Contractor's security controls to confirm Contractor's adherence to the terms of this Article, as well as any applicable laws, regulations, and industry standards, not more than once per year or upon notification of any Security Breach or complaint regarding Contractor's privacy and security practices. Company may elect to obtain the services of a third party to conduct this assessment, audit, examination, or review on behalf of Company. Company shall give Contractor no less than thirty (30) calendar days' notice of its intent to conduct such assessment,

audit, examination, or review. As part of this assessment, audit, examination, or review, Company may review all controls in Contractor's physical and/or technical environment in relation to all Confidential Information being handled and/or services being provided pursuant to this Article. Contractor shall fully cooperate with such assessment by providing access to knowledgeable personnel, physical premises, documentation, infrastructure, and application software that processes, stores, or accesses Company's Confidential Information or systems pursuant to the Contract. Vendor grants the Company the right to perform network-based vulnerability scans of any Internet-reachable websites or devices used for the provision of services or support under the Contract.

VII. SECURITY BREACH PROCEDURES; EQUITABLE RELIEF

(a) Contractor shall:

- (i) provide Company with the name and contact information for any Personnel who shall serve as Contractor's primary security contact and shall be available to assist Company twenty-four (24) hours per day, seven (7) days per week as a contact in resolving obligations associated with a real or emerging Security Breach;
- (ii) notify Company of a real or emerging Security Breach as soon as practicable, but no later than 24 hours after Contractor becomes aware of it; and
- (iii) notify Company of any real or emerging Security Breach by telephone at the following number: (503) 813-5555.

(b) Immediately following Contractor's notification to Company of a real or emerging Security Breach, the Parties shall coordinate with each other to investigate such Security Breach. Contractor agrees to fully and promptly coordinate with Company in Company's handling of the matter, including, without limitation: (i) assisting with any investigation; (ii) providing Company with physical access to the facilities and operations affected; (iii) facilitating interviews with Contractor's Personnel and other employees or agents involved in the matter; and (iv) making available all relevant records and other materials required to comply with applicable law, regulation, industry standards, or otherwise reasonably required by Company.

(c) Contractor shall use best efforts to immediately remedy any real or emerging Security Breach and prevent any further Security Breach at Contractor's expense in accordance with applicable privacy laws, regulations, and standards. Contractor shall reimburse Company for actual reasonable costs incurred by Company in responding to, and mitigating damages caused by, any real or emerging Security Breach, including all costs of notice and/or remediation pursuant to this section. In the event of a Security Breach, Contractor shall promptly use its best efforts to prevent a recurrence of any such Security Breach.

(d) Contractor agrees that it shall not inform any third party of any Security Breach without first obtaining Company's prior written consent other than to inform a complainant that the matter has been forwarded to Company's legal counsel. Further, Company shall have the sole and exclusive right to determine: (i) whether notice of the Security Breach is to be provided to any individuals, regulators, law enforcement agencies, consumer reporting agencies, or others as required by law or regulation, or otherwise in Company's discretion; and (ii) the contents of such notice.

(e) Contractor shall fully cooperate at its own expense with Company in any litigation or other formal action deemed reasonably necessary by Company to protect its rights relating to the use, disclosure, protection, and maintenance of its Confidential Information and Data.

(f) Contractor shall follow the same notice procedures above as applicable if it becomes aware of any significant emerging cybersecurity issues involving any Subcontractors that may result in a Security Breach involving the Company.

(g) Contractor acknowledges that any breach of Contractor's obligations set forth in this Article may cause Company substantial irreparable harm for which monetary damages would not be adequate compensation and agrees that, in the event of such a breach or threatened breach, Company is entitled to seek equitable relief, including a restraining order, injunctive relief, specific performance and any other relief that may be available from any court, in addition to any other remedy to which Company may be entitled at law or in equity. Such remedies shall not be deemed to be exclusive but shall be in addition to all other available remedies at law or in equity, subject to any express exclusions or limitations in the Contract to the contrary.

VIII. MATERIAL BREACH OF CONTRACT

Contractor's failure to comply with any of the provisions in this Article is a material breach of the Contract; in such an instance Company may terminate the Contract for cause in a manner consistent with this Contract. In such an event, Company may terminate the Contract effective immediately upon written Notice to the Contractor without further liability or obligation to Contractor notwithstanding any provision to the contrary in the Contract.

IX. NETWORK SECURITY & PRIVACY LIABILITY

If the Work or Services under the Contract involves the rendering of IT services including, but not limited to: software, software or hardware or systems development or consulting services; internet/application services (e.g., web hosting); providing content; connections to systems, technology or network(s); or if Contractor in any way collects, obtains, maintains or in any way accesses or uses Confidential Information or Data, then Contractor, and its Subcontractors, shall maintain Network Security & Privacy Liability coverage, which can be included via evidenced endorsement to Professional Errors & Omissions coverage, throughout the term of this Contract and for a period of two (2) years thereafter, with a minimum required limit of \$5,000,000 Each Claim.

X. CYBER INDEMNIFICATION

To the fullest extent permitted by the law, Contractor shall defend, indemnify, and hold harmless Company and Company's affiliates, respective officers, directors, employees, agents, and successors (each an "Indemnitee") from and against all losses, damages, liabilities, actions, judgments, interest, awards, penalties, fines, costs or expenses, including reasonable attorneys' fees, arising out of or resulting from any third-party claim against any Indemnitee arising out of or resulting from Contractor's action or omission that represents a failure to comply with any of its obligations under this Article.

ARTICLE 41. ASSIGNMENT

Company may at any time assign its rights and delegate its obligations under this Contract, in whole or in part, including, without limitation, transferring its rights and obligations under this Contract to any: (i) affiliate; (ii) successor in interest with respect to the Work Site; or (iii) corporation or any other business entity in conjunction with a merger, consolidation, or other business reorganization to which Company is a party. Consultant shall not assign any of its rights or responsibilities, nor delegate its obligations, under this Contract or any part hereof without the prior written consent of Company, and any attempted transfer in violation of this restriction shall be void.

ARTICLE 42. SUBCONTRACTS

Consultant shall not subcontract any or all of the Work without prior written consent of Company which shall not be unreasonably withheld. Consultant shall be fully responsible for the acts or omissions of any Subcontractors of any tier and of all persons employed by them, shall maintain complete control over all such Subcontractors, and neither the consent by Company, nor anything contained herein, shall be deemed to create any contractual relation between the Subcontractors of any tier and Company.

Company is committed to and understands the importance of promoting diversity among its consultants and their Subcontractors by increasing the amount of business conducted with qualified diverse business enterprises, including women-owned, minority-owned, disabled veteran-owned, and lesbian, gay, bisexual, and transgender ("LGBT")-owned businesses. Company expects the same level of commitment from Consultant when it subcontracts any of the Work to Subcontractors of any tier. In the event of any spend activity with qualified diverse Subcontractors in a given monthly period, Consultant shall submit, by the 10th day of the following month, the Diversity Subcontractor Spend Report included as Exhibit H. Consultant shall submit the Diversity Subcontractor Spend Report to supplierdiversity@pacificorp.com.

In the event that a state agency or regulatory commission audits any Company report or filing concerning diverse consultant spend activity that had been prepared utilizing information provided at least in part by Consultant, Consultant shall provide Company with all substantiating documentation to sufficiently support Company's report or filing within five (5) business days of any request. Examples of documentation that Company may request include, but are not limited to, contracts or purchase orders between Consultant and any of its Subcontractors identifying Company as the ultimate recipient, invoices between Consultant and any of its Subcontractors identifying Company as the ultimate recipient, and proof of payment by Consultant to any of its Subcontractors.

ARTICLE 43. NON-EXCLUSIVE RIGHTS

Nothing in this Contract is to be construed as granting to Consultant an exclusive right to provide any or all of the Work anticipated herein. The use of Consultant's services is completely discretionary with Company. This Contract shall not be construed in any way to impose a duty upon Company to use Consultant.

ARTICLE 44. NONWAIVER

The failure of Company to insist upon or enforce strict performance by Consultant of any of the terms of this Contract or to exercise any rights herein shall not be construed as a waiver or relinquishment to any extent of Company's right to enforce such terms or rights on any future occasion.

ARTICLE 45. SEVERABILITY

Any provision of this Contract prohibited or rendered unenforceable by operation of law shall be ineffective only to the extent of such prohibition or unenforceability without invalidating the remaining provisions of this Contract.

ARTICLE 46. APPLICABLE LAW AND VENUE

This Contract shall be interpreted in accordance with the substantive and procedural laws of the State of Oregon. Any litigation between the Parties arising out of or relating to this Contract will be conducted exclusively in federal or state courts in the State of Oregon and Consultant consents to jurisdiction by such courts. TO THE FULLEST EXTENT PERMITTED BY LAW, EACH OF THE PARTIES HERETO WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS CONTRACT. EACH PARTY FURTHER WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED. THIS PARAGRAPH WILL SURVIVE THE EXPIRATION OR TERMINATION OF THIS CONTRACT.

ARTICLE 47. ENTIRE AGREEMENT; DOCUMENTS INCORPORATED BY REFERENCE

This Contract and any referenced exhibits and attachments, constitute the complete agreement between the Parties. All understandings, representations, warranties, agreements and any referenced attachments, if any, existing between the Parties regarding the subject matter hereof are merged into and superseded by this Contract, which fully and completely expresses the agreement of the Parties with respect to the subject matter hereof. Any Scope of Work, drawings, schedules or other documents listed in this Contract are incorporated by reference into this Contract. In the event of a conflict between (i) any Scope of Work, drawings, schedules or other attachment or exhibit to this Contract and (ii) the above terms and conditions of this Contract, the above terms and conditions of this Contract shall take precedence and control.

Company assumes no responsibility for any understanding or representation made by any of its employees, officers or agents during or prior to the negotiations and execution of this Contract, unless such understanding or representation is expressly stated in the Contract.

ARTICLE 48. EXECUTION AND EFFECTIVE DATE

This Contract has been executed by duly authorized representatives of the Parties and shall be effective as of date of execution by Company.

CONSULTANT:

**COMPANY:
PACIFICORP**

By:

(Signature)

Name:

(Type or Print)

Title:

(Date Executed)

By:

(Signature)

Name:

(Type or Print)

Title:

(Date Executed)

Attachment C

**OREGON COMPETITIVE BIDDING GUIDELINES
ORDER 06-446**

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UM 1182

In the Matter of an Investigation Regarding) ORDER
Competitive Bidding.)

DISPOSITION: GUIDELINES ADOPTED

On December 3, 2004, the Northwest Independent Power Producers' Coalition (NIPPC) filed a petition asking the Public Utility Commission of Oregon (Commission) to open an investigation regarding competitive bidding requirements for new supply-side resource acquisitions applicable to Oregon's investor-owned electric utilities.

The Commission subsequently opened an investigation. Numerous conferences and workshops were held, as well as a public workshop with the Commissioners. The process culminated with written opening and reply comments, which were filed in September and October 2005.

Intervening parties are Citizens' Utility Board of Oregon (CUB), Northwest Energy Coalition (NWEC), Renewable Northwest Project (RNP), Portland Metropolitan Association of Building Owners and Managers (BOMA), Idaho Power Company (Idaho Power), NIPPC, Portland General Electric Company (PGE), PacifiCorp, Industrial Customers of Northwest Utilities (ICNU), Oregon Department of Energy (ODOE), Cascade Natural Gas Corporation (Cascade), Northwest Natural Gas Company (NWN), Avista Corporation (Avista) and Commission staff (Staff).

Opening comments were filed by NIPPC, Idaho Power, PacifiCorp, ICNU, PGE and Staff. CUB, RNP and NWEC filed joint opening comments. Reply comments were filed by ODOE, NIPPC, Idaho Power, PacifiCorp, PGE and Staff. RNP and NWEC filed joint reply comments.

Competitive Bidding Goals

In Order No 91-1383, the Commission adopted policies and guidelines regarding competitive bidding for investor-owned electric companies in Oregon.

Those goals have guided us well over the years. Therefore, we are making only slight modifications to those 1991 goals. The revised goals are:

1. Provide the opportunity to minimize long-term energy costs, subject to economic, legal and institutional constraints;
2. Complement Oregon's integrated resource planning process;
3. Not unduly constrain utility management's prerogative to acquire new resources;
4. Be flexible, allowing the contracting parties to negotiate mutually beneficial exchange agreements; and
5. Be understandable and fair.

Finally, we agree with Staff that the Request For Proposal (RFP) process is a "means to promote and improve the resource actions identified in the utility's IRP [Integrated Resource Plan] Action Plan." *See*, Staff Reply Comments at 7. Changes occur from the time an Action Plan is acknowledged to when an RFP is released. The changes may be simple, due merely to the passage of time, or dramatic, such as the Western power crisis in 2000. While a utility's Action Plan establishes a roadmap, it is not in the customer's best interest for any utility to march lockstep without any deviation from the plan. We have found that flexibility is important in meeting the goals set out above.

Competitive Bidding Guidelines

After receiving considerable input from the parties, Staff prepared a straw proposal that updated the current competitive bidding process. This proposal was distributed to the parties, who then filed comments regarding the proposal. Staff made some suggested changes to its initial straw proposal in light of parties' comments. These changes are incorporated in Staff's reply comments.

We have considered all of the parties' comments and made our own changes to the straw proposal filed by Staff. In adopting our own, we have reorganized and renumbered the guidelines as originally presented by Staff in its straw proposal. In the following discussion, we will explain the rationale for our guidelines, and address some of the comments filed by the participants. We do not, however, summarize and address all of the comments. The revised competitive bidding guidelines, attached as Appendix A and incorporated herein, take into account the experience we have gained since we adopted the initial guidelines in 1991. While we are adopting a set of guidelines, we have drafted them with both mandatory and permissive language so that the involved utilities will clearly understand our preferences.

We address each as it appears in Appendix A, followed by comment about the specific guideline.

Adopted Bidding Guidelines

1. RFP Requirement: *A utility must issue an RFP for all Major Resource acquisitions identified in its last acknowledged Integrated Resource Plan (IRP). Major Resources are resources with durations greater than 5 years and quantities greater than 100 MW.*

Comment

The definition of Major Resources includes two thresholds: the duration of the resource must be greater than five years, and the resource output must be greater than 100 MW. The parties did not agree on either threshold.

In its straw proposal, Staff recommended a threshold of five years. In general, all parties agree with this threshold except for the utilities. The utilities believe that a ten-year duration is a more appropriate threshold for triggering an RFP, so that they would have the necessary flexibility to pursue mid-term resources. Further, the utilities express concern with regulatory time commitments needed for approval, as well as the time commitment by the utility in completing the RFP process.

As to output, Staff initially recommended a quantity threshold of 50 MW but, in response to the parties' comments, does not oppose a higher threshold. The utilities seek a higher threshold of 100 MW. In addition, PGE argues that the resource output should be defined as MWa rather than MW. PGE contends that MWa ensures that non-dispatchable, intermittent or energy limited resources, such as wind and hydro power, are treated on a comparable basis with other technology types with higher expected capacity factors. RNP and NVEC thought the resource quantity could be increased to 100 MW to accommodate some of the utilities' concerns. RNP, however, opposed PGE's proposed use of MWa, noting such use would allow a utility to acquire wind projects as large as 300 MW without bidding. ICNU and NIPPC support Staff's initial 50 MW threshold, but provide little justification for the lower standard.

We hold that the duration threshold should be five years and the resource output threshold should be 100 MW. While we understand the issues of regulatory time commitments, and the limited exposure to customers of utilities acquiring mid-term resources of five to ten years in duration, we believe that resources greater than five years, with a resource output of more than 100 MW, should undergo a bidding process to ensure obtaining least-cost resources for customers. We will review the practical effects of the duration threshold over the next several years and revise it, if necessary.

Idaho Power raises two concerns not related to the duration or size of these thresholds. First, Idaho Power explains that, unlike other Oregon utilities, its practice is to conduct RFPs on a resource-by-resource basis. Idaho Power hopes to continue this approach, enabling it to preserve the benefits associated with the diversity reflected in the IRP's preferred portfolio. Second, Idaho Power believes that the acquisition of certain large capital-intensive resources, such as a large jointly-owned thermal plant, might not lend itself

to a traditional RFP process because of project complexity, site-specific design and multiple parties which may be involved.

The guideline does not require a utility to conduct an all-resource bid. Accordingly, Idaho Power, or any other utility, may seek competitive bids on a resource-by-resource basis. Furthermore, as to questions on whether an RFP process may not be suitable for the acquisition of certain resources, a utility may seek a waiver of the bidding requirement under the next guideline discussed below.

2. Exceptions to RFP Requirement: *A utility is not required to issue an RFP under the following circumstances:*

- a. Acquisition of a Major Resource in an emergency or where there is a time-limited resource opportunity of unique value to customers.*
- b. Acknowledged IRP provides for an alternative acquisition method for a Major Resource.*
- c. Commission waiver on a case-by-case basis.*

Within 30 days of a Major Resource acquisition under Subsection (a) above, the utility must file a report with the Commission explaining how the requisite conditions have been met for acting outside of the RFP requirement. The report must be served on all the parties and interested persons in the utility's most recent rate case, RFP and IRP dockets.

When requesting a waiver under Subsection (c) above, the utility must file its request with the Commission and serve the request on all parties and interested persons in the utility's most recent general rate case, RFP and IRP dockets. The Commission will issue an order addressing the waiver request within 120 days, taking such oral and written comments as it finds appropriate under the circumstances.

Comment

Staff's straw proposal included an exception to the RFP process in emergencies or when action is needed to take advantage of a time-limited resource opportunity. PacifiCorp contends this waiver should also include similar situations involving "self-build" resources. Staff supports PacifiCorp's proposal. NIPPC does not oppose PacifiCorp's waiver proposal, but questions how a utility self-build resource could ever be utilized in response to an emergency or to take advantage of a time-limited opportunity.

We are cognizant that emergencies arise or specific, time-limited resource opportunities become available, requiring utility action without an RFP process. When those events occur, however, we want to be notified, in some detail, as to why the utility did not use an RFP process for acquiring the Major Resource.

Further, there may be situations, such as that previously discussed under Guideline 1, where a utility decides to ask for a waiver of the RFP process. We are

committed to resolving such requests quickly, using less than a full contested case process. We find this to be appropriate, as we are not making any ratemaking decisions when we waive an RFP requirement. We do not anticipate, however, that utilities will be asking for many such waivers, as we see competitive bidding to be the appropriate method for obtaining Major Resources.

3. Affiliate Bidding: *A utility may allow its affiliates to submit RFP bids. If affiliates are allowed to bid, the utility must blind all RFP bids and treat affiliate bids the same as all other bids.*

4. Utility Ownership Options: *A utility may use a self-build option in an RFP to provide a potential cost-based alternative for customers. A site-specific, self-build option proposed in this way is known as a Benchmark Resource. A utility may also consider ownership transfers within an RFP solicitation.*

Comment

These guidelines are taken from part of Guideline 9 in Staff's straw proposal. Staff's terminology used in its initial straw proposal generated comment. Idaho Power notes that, because it routinely employs an independent consultant in its RFP process, the company does not distinguish between "Standard" and "Non-Standard" RFPs. PacifiCorp and PGE propose more descriptive terms be used to differentiate between RFPs with and without a utility self-build option. PacifiCorp also cautions that the term "Benchmark Resource" should be limited to a utility's self-build options. PacifiCorp explains that other options may be evaluated against a "benchmark," which could be the market or other market options.

We have addressed the parties' concerns about terminology by dispensing with labels. Indeed, as further discussed below, such distinctions generally are not needed because all RFPs now require the use of an independent evaluator. To address PacifiCorp's specific concern, we define a Benchmark Resource as a site-specific, self-build option for which there is a commitment to proceed if it is the resource selected through the RFP. This definition does not preclude a utility from designating the market as an alternative comparator during the RFP evaluation process. If no resources are acquired through the RFP because bids are inferior to the evaluation benchmark, we do not expect an emergency self-build shortly thereafter.

Other comments focused on whether independent power producers should be given an opportunity to build on the utility's site as part of an RFP that includes a self-build option. NIPPC, ICNU, and CUB are in favor of such an opportunity; PGE and PacifiCorp oppose it. PGE explains that, if bidders have access to the utility's site, then the utility should be given access to bidders' sites. Staff raises some legal problems with requiring utilities to provide independent bidders access to utility sites.

We will not require a utility to offer its site locations for development by independent power producers. Granted, a utility could allow a resource to be built upon a particular named piece of utility property. However, that is a decision to be made by the

utility. We share Staff's concerns, raised after consultation with the Department of Justice, whether this Commission has the legal authority to implement the NIPPC and ICNU recommendation. Rather, we adopt Staff's suggestion that the utility be encouraged to offer its site for third party development, as PacifiCorp proposed in its RFP for resources in 2012, docket UM 1208.

Finally, CUB and ODOE argue that independent bidders should be given the right to use a utility's transmission facilities. Again, PGE opposes such access, and contends that any use of PGE transmission facilities would have to comply with requirements mandated by the Federal Energy Regulatory Commission (FERC).

We will not impose third party access to a utility's transmission facilities beyond the access allowed under FERC rules. We encourage utilities, however, to provide information on the availability of transmission facilities and planned projects to bidders.

5. Independent Evaluator (IE): *An IE must be used in each RFP to help ensure that all offers are treated fairly. Commission Staff, with input from the utility and interested, non-bidding parties, will recommend an IE to the Commission, which will then select or approve an IE for the RFP. The IE must be independent of the utility and likely, potential bidders, and also be experienced and competent to perform all IE functions identified in these Guidelines. The IE will contract with and be paid by the utility. The IE should confer with Commission staff as needed, on the IE's duties under these Guidelines. The utility may request recovery of its payments to the IE in customer rates.*

Comment

The parties addressed various issues related to the use, qualifications, selection, reporting, and costs of an IE. As to use, the parties generally focus on need for an IE when an affiliate or self-build option is involved. NIPPC explains that, in such situations, an IE is integral to assuring a comparable evaluation of resources.

We conclude that an IE should be used for all RFPs. While an IE's role is not as involved for an RFP without ownership options or Affiliate Bidding, we find that using an IE has value. We want an independent overseer of the process. As for qualifications, all parties agree on the need for impartiality, but the utilities claim Staff's straw proposal—excluding all candidates providing, or those that have recently provided, consulting services to participants in the western energy markets—is too limiting. Such a restriction, according to PacifiCorp, would preclude the ability to obtain an IE with sufficient experience. PacifiCorp contends that guidelines should balance the need for both independence and experience, without sacrificing one or the other. Staff is persuaded by this argument and supports PacifiCorp's recommendation.

We adopt PacifiCorp's proposal that the guidelines should seek a qualified IE in terms of both independence and experience. We also adopt PacifiCorp's recommendation that any IE candidate disclose any actual or potential conflicts to help the Commission assess independence.

Parties have different views on the process used to select an IE. Staff originally proposed that the IEs be selected by the utility and Staff from a list of qualified candidates. ICNU believes that only Staff, with input from non-bidding parties, should select the IE. ODOE proposes that the utility should be allowed to participate in the IE selection, but not have the final authority to select. Most parties agree that, once selected, the IE should report to Staff, not the utility.

We believe the utility and non-bidders should participate in the process and provide input to Staff. Staff, however, should make a final recommendation to the Commission for approval, which could be accomplished at a public meeting. In approving a final selection, we will give due consideration to an IE already selected for the RFP by another state commission.

We further conclude that the contract for the IE's services should be entered into by the utility and IE. The utility should pay the IE and otherwise manage and administer the contract. The Commission should not be a party to the contract. We recognize that such a contractual arrangement fails to provide the Commission or Staff the legal right to control or direct the IE's activities in response to any reporting requirement and may be problematic. Nonetheless, we are confident that, in the interest of obtaining RFP acknowledgement, the utility will encourage the IE to consult and confer with Staff to help address any actions needed on the part of the IE.

Finally, with regard to IE costs, Staff originally proposed that the IE be paid by the utility through assessments on all bidders, including the utility. In comments, however, most parties, including Staff, favor the payment by the utility with possible recovery from customers. ODOE explains that adding IE costs 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.

We agree that if an IE is useful to the process, and we believe that to be so, then the cost of the IE should be included in rates. Utilities may request deferred accounting to track the costs of IEs for later prudency review and potential inclusion in rates.

6. RFP Design: *The utility will prepare a draft RFP and provide it to all parties and interested persons in the utility's most recent general rate case, RFP and IRP dockets. The utility must conduct bidder and stakeholder workshops on the draft RFP. The utility will then submit a final draft RFP to the Commission for approval, as described in Guideline 7 below. The draft RFPs must set forth any minimum bidder requirements for credit and capability, along with bid evaluation and scoring criteria. The utility may set a minimum resource size, but Qualifying Facilities larger than 10 MW must be allowed to participate. The final draft submitted to the Commission must also include standard form contracts. However, the utility must allow bidders to negotiate mutually agreeable final contract terms that are different from ones in the standard form contracts. The utility will consult with the IE in preparing the RFPs, and the IE will submit its assessment of the final draft RFP to the Commission when the utility files for RFP approval.*

Comment

This guideline combines features originally set forth in Guidelines 9 and 10 of Staff's straw proposal. In Guideline 9, Staff referred to the joint responsibility of the utility and IE to draft certain RFP requirements and develop minimum bidder criteria. Staff also proposed the utility allow opportunities for public involvement in the RFP and, to facilitate such input, provide 60-day advanced notice of its intention to conduct an RFP and possibly conduct workshops. In Guideline 10, Staff recommended that the utility may propose minimum bidder requirements for credit and capability, and that such requirements would also be subject to public comment during the RFP design.

In comments, RNP supports the proposed public input opportunities. Idaho Power, however, raises concerns about the release of bid evaluation and scoring criteria during public workshops. Idaho Power considers the criteria to be proprietary information that should be afforded protection. PacifiCorp also raises concerns about Staff's use of the word "may" in recommending that a utility may propose minimum bidder requirements. PacifiCorp is concerned that such language might suggest that minimum bidder requirements are not necessary. On this issue, Idaho Power provides a list of minimum bidder attributes the company customarily establishes, with the assistance of an independent consultant. PacifiCorp and Staff agree that the IE and other parties should be allowed to review the proposed minimum bidder requirements, which should be approved by the Commission. Lastly, ODOE contends that all resources over 10 MW should be allowed to bid, in order to be consistent with the Commission's limit for standard avoided cost rates and standard contracts for Qualifying Facilities, and that bids should not be excluded because of the lack of transmission capabilities.

In adopting the guideline above, we revise the language to clarify that the utility is responsible for preparing the draft RFP, conducting bidder and stakeholder workshops, and submitting the final RFP to the Commission for approval. The utility must, however, consult with the IE during these activities, and the IE will submit an assessment of the final RFP to the Commission during the approval phase discussed below.

We also modify the language used in the straw proposal to require the utility to conduct bidder and stakeholder workshops. We required PacifiCorp to utilize this open process in its 2004 RFP, and believe it should be mandatory to allow all interested persons the ability to participate and provide input on the RFP design. We remove, however, the 60-day advance notice requirement proposed in Staff's straw proposal. This requirement apparently was based on current practice under Order No. 91-1383, which contemplates Commission review and approval of a draft IRP in 60 days. Under the guideline adopted above, the utility must widely distribute copies of the draft RFP and conduct workshops with interested parties. We decline to establish a minimum time period for such activities, but expect the utilities to provide ample time to ensure an adequate opportunity for public input.

In response to PacifiCorp's concerns about minimum bidder requirements, we accept Staff's explanation that its straw proposal was not intended to alter the principles,

articulated in Order No. 91-1383, that utilities should address the credit and capability of prospective bidders in order to protect ratepayers.

We agree with ODOE with respect to qualifying facilities under the Public Utility Regulatory Policies Act, and include language that prohibits utilities from excluding Qualifying Facilities larger than 10 MW from participating. In addition, we add language to the guideline to make clear that a utility should be willing to negotiate on the terms of the standard contract to achieve comparable outcomes. We conclude, however, that ODOE's other concern about bidders that lack transmission capabilities is more appropriately addressed during the review of an individual RFP.

Finally, with respect to evaluation and scoring criteria, we conclude that bidders should be given enough information during the RFP design process to determine how important different project and bidder characteristics are to the utility. Specific scoring criteria, such as points awarded for non-price factors, will be limited to non-bidding parties under the terms of Guideline 12, further addressed below.

7. RFP Approval: *The Commission will solicit public comment on the utility's final draft RFP, including the proposed minimum bidder requirements and bid scoring and evaluation criteria. Public comment and Commission review should focus on: (1) the alignment of the utility's RFP with its acknowledged IRP; (2) whether the RFP satisfies the Commission's competitive bidding guidelines; and (3) the overall fairness of the utility's proposed bidding process. After reviewing the RFP and the public comments, the Commission may approve the RFP with any conditions and modifications deemed necessary. The Commission may consider the impact of multi-state regulation, including requirements imposed by other states for the RFP process. The Commission will target a decision within 60 days after the filing of the final draft RFP, unless the utility requests a longer review period when it submits the final draft RFP for approval.*

Comment

We made two primary modifications to Staff's straw proposal to address concerns raised by commenting parties. First, in response to ICNU's questions about the length of time needed for Commission approval of an RFP, we extend the review period by 15 days, to 60 days. While we expect that interested persons will have been involved in the RFP process during its drafting and will have the opportunity to raise concerns and obtain information prior to the utility formally filing the RFP, we extend the process to address any concerns about discovery. Second, we add language proposed by PacifiCorp to clarify the focus of the Commission's review in approving an RFP, and to acknowledge that this review may include consideration of requirements imposed by other state commissions.

To respond to other concerns about the effect of Commission approval of an RFP, we clarify that Commission approval is simply a determination on the three criteria set out in the guideline—that is, whether the utility's RFP is consistent with its acknowledged IRP, whether the RFP satisfies these guidelines, and whether the utility's proposed bidding process is fair. The approval is simply that: the RFP meets these criteria, does not meet the

criteria, or would meet the criteria with certain conditions and modifications. Any ratemaking determinations would occur at a later time.

8. Benchmark Resource Score: *The utility must submit a detailed score for any Benchmark Resource, with supporting cost information, to the Commission and IE prior to the opening of bidding. The 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, with input from the IE, determines that bidder updates are appropriate, the utility may also update the costs and score for the Benchmark Resource. The IE will review the reasonableness of the score(s) for the Benchmark Resource. The information provided to the Commission and IE will be sealed and held until the bidding in the RFP has concluded.*

Comment

We adopt this guideline without substantive modification from Staff's straw proposal. We acknowledge PGE's concern about the inclusion of transmission arrangements, and agree that a utility should not be required to reveal this information to other bidders. As PGE notes, a utility should have the same opportunity as other bidders to keep this type of information blinded from other bidders.

We reject ICNU's suggestion that, if bidder updates are allowed, the IE should evaluate whether the opportunity for updates resulted in favoring the utility or an affiliate resource. We are satisfied that, in such situations, the opportunity to rebid or provide updates would be extended to all bidders. Any concerns about the timing of the updates may be raised during the acknowledgement for the final short-list of bids. We also find that the guidelines are clear enough on the equal treatment of the Benchmark Resource, and conclude there is no need to add language, proposed by ODOE, to clarify that the term "bids" includes the Benchmark Resource.

9. Bid Scoring and Evaluation Criteria:

a. Selection of an initial short-list of bids should be based on price and non-price factors, and provide resource diversity (e.g., with respect to fuel type and resource duration). 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. The non-price score should be based on resource characteristics identified in the utility's acknowledged IRP Action Plan (e.g., dispatch flexibility, resource term, portfolio diversity, etc.) and conformance to the standard form contracts attached to the RFP.

b. Selection of the final short-list of bids should be based, in part, on the results of modeling the effect of candidate resources on overall system costs and risks. The portfolio modeling and decision criteria used to select the final short-list of bids must be

consistent with the modeling and decision criteria used to develop the utility's acknowledged IRP Action Plan. The IE must 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 final bids from the initial short-list of bids. The Commission may require the utility to obtain an advisory opinion from a ratings agency to substantiate the utility's analysis and final decision.

Comment

CUB, NWECC, and RNP filed joint comments recommending several modifications to Staff's straw proposal on bid scoring and evaluation criteria. First, the public interest parties recommend that the selection of the initial short-list of bids should not be based on a comparison of resources of different fuel types. Rather, they prefer selection from pools of each type of resource. Staff disagrees, and responds that a utility may improve diversity by having an initial short-list with different fuel types from an all-source bid, or by running simultaneous resource specific solicitations. Staff explains that resource-specific bids should occur at the same time in case the market yields different costs than assumed in the IRP, indicating a preference to acquire some types of resources over others. We agree with Staff's proposed approach, but add language in subsection (a) to require resource diversity in the initial short-list.

CUB, NWECC, and RNP also recommend additional procedures be used if the bids and other updated information are significantly different from the original inputs used in the IRP. The parties define "significantly different" to mean that the average bids in the initial short-list for each resource type differ by more than 20 percent from those modeled in the IRP. If that threshold is met or exceeded, the public interest parties contend that the utility should re-run the modeling used in the IRP. Staff, PGE and PacifiCorp oppose the proposal. Staff explains that such additional process would divert time and resources determining whether any bid differences are significant, rather than focusing those resources on determining the best combination of bids. We agree and prefer to view the competitive bidding process as a search process aimed at helping find the best combination of resources for ratepayers. As stated in subsection (b) of this guideline, we expect the utility to apply the same analytical approach and judgment in selecting the final short-list as it did in developing its acknowledged IRP Action Plan. For example, it should apply the same tradeoff between cost and risk in the bid process as it did in the IRP, and not simply focus on expected cost at the acquisition stage.

Staff, PGE and ODOE recommend other refinements to the guideline. Following publication of its straw proposal, Staff filed comments proposing that utilities be allowed to propose environmental scoring based on the environmental analysis included in its acknowledged IRP. PGE supports Staff's suggestion, adding that it provides the flexibility needed to adapt to changing circumstances and links the environmental scoring to the IRP analysis process. We share Staff's and PGE's view, but conclude that no modifications are required, given the guideline's link to the IRP in subsections (a) and (b). Similarly, we agree

with ODOE that utilities should, in selecting initial short-list bids and the final short-list, include the transmission and generation integration costs. Again, we believe the guideline, as written, includes that requirement.

Idaho Power and PGE raise questions about the ability of a utility to provide an IE with access to production cost and risk models. The utilities explain that certain licensing agreements with software vendors may preclude an IE's ability to access these analytical tools. We acknowledge the utilities' concerns. We expect, however, that utilities will take all reasonable actions necessary to obtain a license that allows an IE to access these models, and will justify any failure to do so when seeking RFP approval.

Finally, many parties focus on how to address debt imputation for power purchase agreements (PPA). PGE and PacifiCorp want debt imputation considered at all stages of bidding and scoring, while Staff recommends that debt imputation only be considered at the final stage. Other parties, such as NIPPC, recommend that debt imputation not be considered at all in the bid scoring and evaluation.

To consider debt imputation at all stages is too cumbersome a process and not necessary to meet the goals of these guidelines. We understand that by considering debt imputation solely at the final stage, we risk giving an advantage to resources with imputed debt in determining the initial short-list. We do not consider that risk to be significant, however. Further, we agree with Staff that reserving analysis of imputed debt until the final stage decreases the possibility of disqualifying a power purchase agreement that should be considered.

10. Utility and IE Roles in the RFP Process:

a. The utility will conduct the RFP process, score the bids, select the initial and final short-lists, and undertake negotiations with bidders.

b. The IE will oversee the RFP process to ensure that it is conducted fairly and properly.

c. If the RFP does not allow affiliate bidding and does not include ownership options (i.e., the utility is not including a Benchmark Resource or considering ownership transfers), the IE will check whether the utility's scoring of the bids and selection of the short-lists are reasonable.

d. If the RFP allows affiliate bidding or includes ownership options, the IE will independently score the utility's Benchmark Resource (if any) and all or a sample of the bids to determine whether the selections for the initial and final short-lists are reasonable. In addition, the IE will evaluate the unique risks and advantages associated with the Benchmark Resource (if used), including the regulatory treatment of costs or benefits related to actual construction cost and plant operation differing from what was projected for the RFP.

e. Once the competing bids and Benchmark Resource (if used) have been scored and evaluated by the utility and the IE, the two should compare results. The utility and IE should attempt to reconcile and resolve any scoring differences. If the two are unable to agree, the IE should explain the differences in its Closing Report.

Comment

We made several revisions to this guideline as originally proposed in Staff's straw proposal. First, we modify the language to make it consistent with our earlier decision to require an IE for all RFPs. Second, we clarify the role of the IE in the RFP process. ICNU recommends, and Staff concurs, that the IE should independently review, rather than merely "validate," the utility's bid scoring. We agree, provided that the RFP allows affiliate bidding or includes ownership options. We add language to clarify this role, and to require the IE to score the Benchmark Resource, and as many bids as the IE believes to be necessary to conclude that the process was fair and the result was reasonable. We do not impose such a requirement where the utility is not including a Benchmark Resource or considering ownership transfers or affiliate bids. In such cases, the IE need only validate the utility's scoring.

Third, ICNU also proposes that, if differences arise between the utility's and the IE's scoring, the IE should be under no obligation to work with the utility to reconcile the differences. On this matter, we share Staff's opinion that the IE and the utility should attempt to resolve differences in bid scoring and evaluation. We agree with ICNU, however, that compromise should not be required, and have added language accordingly.

Fourth, pursuant to PGE's proposal, we modify language, set forth in subsection (d), to make the discussion on risk more neutral. We reject, however, PacifiCorp's recommendations that the Benchmark Resource option should not be treated and evaluated like a bid and that non-price factors, such as possible cost overruns, should not be considered. We recognize that Benchmark Resources are different from other bids in that price and performance is not fixed. Such differences, however, emphasize the need to consider the additional risk customers bear in deciding the best option from the RFP. This risk to customers is present even if the actual costs of the Benchmark Resource are equally likely to be lower or higher than projected in the RFP.

11. IE Closing Report: *The IE will prepare a Closing Report for the Commission after the utility has selected the final short-list. In addition, the IE will make any detailed bid scoring and evaluation results available to the utility, Commission staff, and non-bidding parties in the RFP docket, subject to the terms of a protective order.*

Comment

While this guideline generated little discussion or dissension, we modify the language of straw proposal to recognize that the IE will be involved in the acknowledgment process (*See* Guideline 13), and should complete the Closing Report before then, and to clarify that the IE's bid scoring and evaluation results will be subject to protective order (*See* Guideline 12).

12. Confidential Treatment of Bid and Score Information: *Bidding information, including the utility's cost support for any Benchmark Resource, as well as detailed bid scoring and evaluation results will be made available to the utility, Commission staff and non-bidding parties under protective orders that limit use of the information to RFP approval and acknowledgment and to cost recovery proceedings.*

Due to the competitive nature of the power market and generation development business, PacifiCorp raises concerns about the disclosure of detailed bid scoring and evaluation results to non-bidding consumer advocates. PacifiCorp explains that these parties may include entities that could use this information to the commercial disadvantage of bidders or the utility. RNP and Staff believe that such information should be made available. Staff suggests that PacifiCorp's concerns could be addressed through heightened protective procedures. We agree with RNP and Staff that non-bidding parties should have access to this information and have written the guideline accordingly.

13. RFP Acknowledgment: *The utility may request that the Commission acknowledge the utility's selection of the final short-list of RFP resources. The IE will participate in the RFP acknowledgment proceeding. Acknowledgment has the same meaning as assigned to that term in Commission Order No. 89-507. RFP acknowledgment will have the same legal force and effect as IRP acknowledgment in any future cost recovery proceeding. The utility's request should discuss the consistency of the final short-list with the company's acknowledged IRP Action Plan.*

The final suggested guideline by Staff in its straw proposal provides the utility an opportunity to ask for Commission acknowledgment of the final short-list of RFP resources. ICNU questions the value of this process, noting that it does not appear to limit utility bias or otherwise improve the process. To the contrary, ICNU suggests such approval only benefits utilities by providing greater assurance that their resource procurement process will be found reasonable in a subsequent rate proceeding. If the Commission is inclined to acknowledge the results of the RFPs, ICNU recommends the Commission defer this issue until it has been proven that the utilities are not biasing the results. PacifiCorp, Idaho Power, PGE, NIPPC and Staff favor Commission acknowledgement. These parties contend such acknowledgement would have the same meaning as that used in the IRP process. Consequently, Staff and the other parties believe that acknowledgment would not restrict the Commission's ability to disallow costs of resources acquired through the RFP process.

We adopt the proposal to allow the utilities the ability to request Commission acknowledgement. Such Commission action would carry the same weight as an

acknowledgment of an IRP—that is, a conclusion that the final short-list seems reasonable, based on the information provided to the Commission at that time. It will not, as ICNU fears, provide a guarantee of favorable ratemaking treatment during rate recovery. Moreover, Commission acknowledgement is not mandatory. The Commission may decline to acknowledge. We also direct the utility to explain whether its final short-list is consistent with the near-term resource acquisitions identified in its acknowledged IRP.

ODOE recommends that the Commission should acknowledge resource amounts, rather than final short-lists. ODOE provides little explanation to support this recommendation, but it appears the agency is concerned that the utility will not acquire sufficient resource diversity. We decline ODOE's proposal. If adopted, we are concerned that such acknowledgment would segment the short-list and weaken the utility's bargaining position. Moreover, ODOE's apparent concerns about resource diversity are mitigated by the utility's ultimate responsibility for obtaining the best deal in terms of cost and risk through the RFP process.

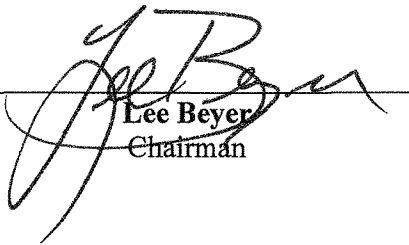
CONCLUSION

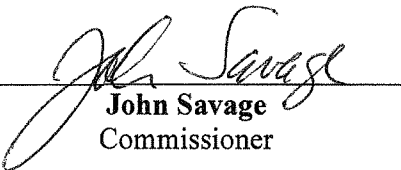
For the reasons set forth above, we conclude that the RFP guidelines, attached as Appendix A, should be adopted. These guidelines become effective on the date this order is entered, and apply to all pending and future RFP proceedings.

ORDER

IT IS ORDERED that the RFP guidelines, attached as Appendix A, are adopted.

Made, entered, and effective AUG 10 2006.


Lee Beyer
Chairman


John Savage
Commissioner


Ray Baum BB
Commissioner



A party may request rehearing or reconsideration of this order pursuant to ORS 756.561. A request for rehearing or reconsideration must be filed with the Commission within 60 days of the date of service of this order. The request must comply with the requirements in OAR 860-014-0095. A copy of any such request must also be served on each party to the proceeding as provided by OAR 860-013-0070(2). A party may appeal this order by filing a petition for review with the Court of Appeals in compliance with ORS 183.480-183.484.

UM 1182
Competitive Bidding Guidelines

- 1. RFP Requirement:** A utility must issue an RFP for all Major Resource acquisitions identified in its last acknowledged IRP. Major Resources are resources with durations greater than 5 years and quantities greater than 100 MW.
- 2. Exceptions to RFP Requirement:** A utility is not required to issue an RFP under the following circumstances:
 - a. Acquisition of a Major Resource in an emergency or where there is a time-limited resource opportunity of unique value to customers.
 - b. Acknowledged IRP provides for an alternative acquisition method for a Major Resource.
 - c. Commission waiver on a case-by-case basis.

Within 30 days of a Major Resource acquisition under Subsection (a) above, the utility must file a report with the Commission explaining how the requisite conditions have been met for acting outside of the RFP requirement. The report must be served on all the parties and interested persons in the utility's most recent rate case, RFP and IRP dockets.

When requesting a waiver under Subsection (c) above, the utility must file its request with the Commission and serve the request on all parties and interested persons in the utility's most recent general rate case, RFP and IRP dockets. The Commission will issue an order addressing the waiver request within 120 days, taking such oral and written comments as it finds appropriate under the circumstances.

- 3. Affiliate Bidding:** A utility may allow its affiliates to submit RFP bids. If affiliates are allowed to bid, the utility must blind all RFP bids and treat affiliate bids the same as all other bids.
- 4. Utility Ownership Options:** A utility may use a self-build option in an RFP to provide a potential cost-based alternative for customers. A site-specific, self-build option proposed in this way is known as a Benchmark Resource. A utility may also consider ownership transfers within an RFP solicitation.
- 5. Independent Evaluator (IE):** An IE must be used in each RFP to help ensure that all offers are treated fairly. Commission staff, with input from the utility and interested, non-bidding parties, will recommend an IE to the Commission, which will then select or approve an IE for the RFP. The IE must be independent of the utility and likely, potential bidders and also be experienced and competent to perform all IE functions identified in these Guidelines. The IE will contract with and be paid by the

utility. The IE should confer with Commission staff as needed on the IE's duties under these Guidelines. The utility may request recovery of its payments to the IE in customer rates.

6. RFP Design: The utility will prepare a draft RFP and provide it to all parties and interested persons in the utility's most recent general rate case, RFP and IRP dockets. The utility must conduct bidder and stakeholder workshops on the draft RFP. The utility will then submit a final draft RFP to the Commission for approval, as described in paragraph 7 below. The draft RFPs must set forth any minimum bidder requirements for credit and capability, along with bid evaluation and scoring criteria. The utility may set a minimum resource size, but Qualifying Facilities larger than 10 MW must be allowed to participate. The final draft submitted to the Commission must also include standard form contracts. However, the utility must allow bidders to negotiate mutually agreeable final contract terms that are different from ones in the standard form contracts. The utility will consult with the IE in preparing the RFPs, and the IE will submit its assessment of the final draft RFP to the Commission when the utility files for RFP approval.

7. RFP Approval: The Commission will solicit public comment on the utility's final draft RFP, including the proposed minimum bidder requirements and bid scoring and evaluation criteria. Public comment and Commission review should focus on: (1) the alignment of the utility's RFP with its acknowledged IRP; (2) whether the RFP satisfies the Commission's competitive bidding guidelines; and (3) the overall fairness of the utility's proposed bidding process. After reviewing the RFP and the public comments, the Commission may approve the RFP with any conditions and modifications deemed necessary. The Commission may consider the impact of multi-state regulation, including requirements imposed by other states for the RFP process. The Commission will target a decision within 60 days after the filing of the final draft RFP, unless the utility requests a longer review period when it submits the final draft RFP for approval.

8. Benchmark Resource Score: The utility must submit a detailed score for any Benchmark Resource, with supporting cost information, to the Commission and IE prior to the opening of bidding. The 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, with input from the IE, determines that bidder updates are appropriate, the utility may also update the costs and score for the Benchmark Resource. The IE will review the reasonableness of the score(s) for the Benchmark Resource. The information provided to the Commission and IE will be sealed and held until the bidding in the RFP has concluded.

9. Bid Scoring and Evaluation Criteria:

- a. Selection of an initial short-list of bids should be based on price and non-price factors and provide resource diversity (e.g., with respect to fuel type and resource duration). 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. The non-price score should be based on resource characteristics identified in the utility's acknowledged IRP Action Plan (e.g., dispatch flexibility, resource term, portfolio diversity, etc.) and conformance to the standard form contracts attached to the RFP.
- b. Selection of the final short-list of bids should be based in part on the results of modeling the effect of candidate resources on overall system costs and risks. The portfolio modeling and decision criteria used to select the final short-list of bids must be consistent with the modeling and decision criteria used to develop the utility's acknowledged IRP Action Plan. 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 final bids from the initial short-list of bids. The utility should obtain an advisory opinion from a ratings agency to substantiate its analysis and final decision, if requested by the Commission.

10. Utility and IE Roles in RFP Process:

- a. The utility will conduct the RFP process, score the bids, select the initial and final short-lists, and undertake negotiations with bidders.
- b. The IE will oversee the RFP process to ensure that it is conducted fairly and properly.
- c. If the RFP does not allow affiliate bidding and does not include ownership options (i.e., the utility is not including a Benchmark Resource or considering ownership transfers), the IE will check whether the utility's scoring of the bids and selection of the short-lists are reasonable.
- d. If the RFP allows affiliate bidding or includes ownership options, the IE will independently score the utility's Benchmark Resource (if any) and all or a sample of the bids to determine whether the selections for the initial and final short-lists are reasonable. In addition, the IE will evaluate the unique risks and advantages associated with the Benchmark Resource (if used), including the regulatory treatment of costs or benefits related to actual construction cost and plant operation differing from what was projected for the RFP.

- e. Once the competing bids and Benchmark Resource (if used) have been scored and evaluated by the utility and the IE, the two should compare results. The utility and IE should attempt to reconcile and resolve any scoring differences. If the two are unable to agree, the IE should explain the differences in its Closing Report.

11. IE Closing Report: The IE will prepare a Closing Report for the Commission after the utility has selected the final short-list. In addition, the IE will make any detailed bid scoring and evaluation results available to the utility, Commission staff, and non-bidding parties in the RFP docket subject to the terms of a protective order.

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