

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UM 1773

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In the Matter of:	)	
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<b>PORTLAND GENERAL ELECTRIC COMPANY,</b>	)	<b>PUBLIC COMMENTS OF POTENTIAL BIDDER</b>
	)	
Petition for Partial Waiver of Competitive Bidding Guidelines and Approval of Request for Proposals (RFP) Schedule	)	
	)	

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Pursuant to this Commission’s Order #16-221 (June 8, 2016), these comments are submitted on behalf of an independent power producer who wishes to remain unnamed (the “Potential Bidder”) because of its potential involvement as a bidder in the referenced RFP. Through these comments, the Potential Bidder does not seek to intervene in this docket or otherwise become a party; its goal is simply to provide the Commission with additional comments for consideration pursuant to the Commission’s June 8 Order.

Minimum Bid Bond provisions are arbitrary, excessive and discriminatory.

Potential Bidder draws to the Commission’s attention concerns with the draft RFP’s Minimum Bid Bond provisions, contained in Section 7.1.2 of the May 23, 2016 draft.

**ARBITRARY.** It is important to note that the proposed Bid Bond would not be part of the *quid pro quo* between a successful bidder and Portland General Electric Company (“PGE”). Instead, it would be merely the price of admission to pre-contract negotiations between a bidder and PGE – negotiations that may never lead to a successful contract due to no fault of that bidder. As NIPPC has pointed out to the Commission over the years, most recently in its comments on PGE’s latest proposed RFP, a utility should not unduly favor its own projects over projects sponsored by independent developers as a means to augment the utility’s retail ratebase. That

argument has not been put to rest to the satisfaction of the independent-developer community. Adding a pre-contractual Bid Bond to the RFP process would simply create a further disincentive to RFP participation by independent developers already skeptical about the resource-procurement process in Oregon.

In Potential Bidder's experience, most RFPs for projects within the WECC do not even ask for a Bid Bond prior to contract execution. There has been no reasoned demonstration of need for a pre-contractual bond in this RFP, either.

**EXCESSIVE & DISCRIMINATORY.** The RFP should contain no pre-contractual bond requirement whatsoever. However, if there is to be one, Potential Bidder wishes to draw to the Commission's attention Section 7.1.2 of the May 23, 2016 draft. Specifically, the Bid Bond amount – two years of project revenues – is excessive, and is high for the industry.

The magnitude of the proposed Bid Bond would discriminate against small developers because small developers will have to put up cash equivalent to two years of project revenues to participate in negotiations. Developers will have to price this cost into their proposals, which will increase the overall price PGE pays to procure electricity, and is not in the best interest of PGE ratepayers.

The Minimum Bid Bond is susceptible to abuse.

As an additional concern, there are no details outlining the return of the Bid Bond. A letter of credit or bond needs to clearly articulate the conditions under which PGE can draw on the letter of credit or bond. The below statement from PGE, in response to a bidder's question, suggests that PGE could arbitrarily draw on the bond or letter of credit if a deal, due to no fault of the bidder, is not consummated:

[Q:] What conditions would make the bidder lose its right to the 10% bid bond?

[A:] The purpose of the bid bond is to ensure a successful bidder enters into a contract, following negotiations, and that the bidder can provide adequate financial assurances as negotiated in the contract. If a bidder refuses to enter into a contract after award, chooses to withdraw its bid after shortlisting but before the release from further negotiations, or

cannot provide adequate financial assurances, PGE can assert its right under the bond.  
[PGE 2016 RPS RFP Registered Users Questions & Answers, Ref # 28]

This answer suggests that a “successful bidder” must enter into a contract if PGE wishes for there to be a contract, or else PGE can collect on its pre-contractual bond. PGE is not bound to execute a contract, but the bidder is – or else it risks forfeiting its bond. This asymmetry is troubling. To be clear, Potential Bidder wishes to participate in the RFP and then proceed successfully to contract; it just does not want to be compelled to agree to unsatisfactory terms during negotiations at the risk of forfeiture of its bond.

Summary

There should be no pre-contractual bid bond requirement as part of PGE’s proposed RFP. However, if the Commission determines that a Bid Bond is appropriate, the bond should be sized no larger than the completion security (which the RFP terms “Pre-COD Security”), and with clear documentation under what conditions PGE can call on the Bid Bond.

Thank you for consideration of these comments.

Respectfully submitted this 23rd day of June, 2016.

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By



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