A close up of a sign

Description automatically generatedA picture containing logo

Description automatically generated

|  |  |
| --- | --- |
| Michigan Energy Innovation Business Council  115 W. Allegan, Suite 710  Lansing, MI 48933 | Advanced Energy Economy  1010 Vermont Ave NW, Suite 1050  Washington, DC 20005 |

October 30, 2020

The Michigan Energy Innovation Business Council (Michigan EIBC) and Advanced Energy Economy (AEE) appreciate the opportunity to provide feedback in response to the Commission Staff Draft Procurement Guidelines. We appreciate the Commission’s attention to this important issue and view this topic as both timely and important given the ongoing rapid changes within the electricity sector.

Below we provide direct comments on the Staff proposal and answers to questions posed by Staff. We also provide line edits and comments on the Staff proposal at the end of our comments.

Regards,

|  |  |
| --- | --- |
| A picture containing table  Description automatically generated  Laura Sherman President  Michigan EIBC  Lansing, MI  [laura@mieibc.org](mailto:laura@mieibc.org)  [www.mieibc.org](http://www.mieibc.org) | A picture containing hanger, object  Description automatically generated  Ryan Katofsky  Managing Director  Advanced Energy Economy  [rkatofsky@aee.net](mailto:rkatofsky@aee.net)  www.aee.net |

**Responses to Staff Inquiries:**

1. *In addressing the draft guidelines below, please indicate your support, opposition, proposed modification, or request for clarification on specific items. Are there any additional guidelines that should be included?*

Objective and Guiding Principles

We generally support the stated objectives and guiding principles laid out in the Staff Draft Guidelines, in particular the drive towards transparency and non-discriminatory access. Although Staff did not fully elaborate on what it meant by transparency, we see this as applying to at least two aspects of a competitive bidding framework: (i) transparency with respect to the process itself (as indicated in Item 2a of the Draft Guidelines), and (ii) the provision of information about the needs to be met by the solicitation.

With some exceptions, we generally support a technology-neutral approach to resource acquisition, provided that all needs are fully considered, including those related to emissions reductions that are consistent with the recent executive actions by Governor Whitmer on carbon neutrality. However, it is important to consider, as outlined further below, how a technology-neutral approach would apply to the different planning processes. For example, in an IRP, a utility determines, based on scenario modeling, the most prudent, least cost course of action to meet its generation needs. If all available technologies are appropriately considered and modeled, an IRP can therefore represent a technology-neutral consideration of all available sources. An RFP issued after an IRP, therefore, need not be open to all technologies, but instead, should serve to meet the needs identified in the approved IRP.

With respect to the exclusion of EWR and demand side programs from the proposed guidelines, we understand that this is a practical consideration from the point of view of program integrity and continuity, but over the longer term, this may represent a lost opportunity to drive deeper energy efficiency achievement and leverage cost-effective customer-sited resources. We recommend that the Commission reconsider this exclusion as it explores issues around planning and other innovations as part of MI Power Grid. As technologies continue to evolve and improve, and the ability to manage customer loads and behind-the-meter resources increases, the Commission should look for ways to increase the participation of all demand-side resources for meeting system needs.

All-source bidding

As stated above, as a general principle, we support a technology-neutral approach to resource acquisition so as to ensure the most robust market response and to drive down costs to true market pricing through competition. However, fully “all-source” bidding processes can effectively be exclusionary for certain renewable resources (e.g., solar PV or solar plus storage hybrid systems) that cannot always compete in Michigan on a pure price basis. As a result, the factors used to evaluate bids and structure RFPs should reflect the full range of desired performance characteristics, and not just “system needs” as described in Item 2b in the Draft Guidelines. The Draft Guidelines appear to recognize this when it includes the consideration of non-price factors (Item 4b). We strongly encourage the Commission to direct utilities to consider policy objectives, and in particular the recent executive actions related to greenhouse gas reductions.[[1]](#footnote-1) This will create an RFP framework that is technology-neutral while also aiding Michigan in reaching carbon-neutrality by 2050. As stated by Fritz Kahrl of Lawrence Berkeley National Laboratory at the September 14, 2020 stakeholder meeting, a net value framework is a more “meaningful metric than cost.”[[2]](#footnote-2) There are different ways that these important considerations can be included in the bidding and evaluation process. For example, the evaluation framework could include a carbon price in evaluating bids, or the RFP could specify that resources must be emissions-free.

As described above, it is important to consider, how a technology-neutral approach would apply to the different planning processes. An RFP issued after an IRP need not be open to all technologies, but instead, should serve to meet the needs identified in the approved IRP. In other cases, such as with voluntary green pricing programs, it would obviously make sense for utilities to make specific technology requirements part of the RFP process.

Competitive bidding guidelines

With respect to guidelines set in previous FERC cases, the Commission should explicitly describe which principles should be adhered to and how the utilities should comply. Specifically, with respect to FERC Order 872, it is unclear if all of the requirements included in that Order to allow a utility to use competitive solicitation to determine PURPA avoided cost should be applied to all competitive bidding. For example, does the Commission intend to require that RFPs be conducted at “regular intervals”? In addition, as discussed below, it is critical that the Commission and stakeholders carefully consider the role of and rules around an independent evaluator or independent administrator. It is not immediately apparent that the requirements set forth in FERC Order 872 for an independent administrator should apply to all competitive bidding processes.

In addition, it is unclear how the Commission intends to apply the *Allegheny* principles. Given that these were established in a 2004 FERC Order, it would be instructive to understand whether or not these principles are already used to guide Commission review of RFP processes and selection results. Michigan EIBC and AEE agree with the broad principles of transparency, non-discrimination, fair evaluation, and third-party oversight of competitive bidding. However, it is important in these guidelines for the Commission to specifically describe how the broad *Allegheny* principles will be applied to the evaluation of competitive bidding processes in Michigan.

Template PPA

It is important to carefully consider how bidders interact with the utility in terms of a proposed contract. In some cases, utilities have required bidders to mark up a template contract, indicating which changes are “necessary” and which items are simply “valuable.” This is extremely time consuming for bidders (these template contracts can be hundreds of pages in length) and counter-productive because it involves a self-negotiation process. No real negotiation involves a party making decisions on individual line item changes in a vacuum. Instead, the changes should be considered as a whole along with other changes being proposed. For example, a bidder may find a specific change “necessary” on its own, but when considered in the context of three other changes that are more reasonable to the utility, that same bidder may be willing to leave out the first change. Instead, it may be helpful for the utility to identify in the RFP which provisions in a contract are non-negotiable. Providing this information to all bidders would increase transparency, decrease wasted time, and improve the accuracy of bid prices.

Transmission and distribution constraints

It is unclear how an RFP would contemplate or score transmission and distribution constraints when these will vary widely across the utility’s territory and for projects of different sizes. Given the timeline for these RFP processes and utility interconnection studies, it is possible, depending on RFP requirements, for bidders to enter an RFP process prior to having a completed interconnection study. It is possible, therefore, that the full cost of system upgrades may not be accurately known at the time a bid is entered. One solution may be for a utility to conduct an expedited interconnection study on short-listed bids to determine expected system upgrade costs. These can then be used to re-score the bids with these accurate system upgrade costs included. It is unreasonable, therefore, to require transmission/distribution upgrade costs in bid prices. In many cases, such requirements would lead to inaccurate bid prices and an unfair evaluation process.

Financial compensation mechanism

It is important that potential bidders be able to accurately and transparently calculate any financial compensation mechanism (FCM) or adjustment factors to understand the final proposal prices that will be used for evaluation. Without this information a bidder cannot accurately weigh the preferred ownership model for a given project proposal.

Code of Conduct

As described below, Michigan EIBC and AEE believe that utilities and utility-affiliates should not compete in RFP processes in which the utility conducts the bid evaluation process. We do not believe that adherence to the current Code of Conduct will address the potential for an unfair process because the Code of Conduct was not designed to enable fair evaluation and consideration of bids submitted by utility-affiliates and third parties.

Under all circumstances, and regardless of how bids are evaluated, in the case of utility-affiliates participating in RFPs, the Commission should ensure that access to all relevant information necessary to provide a timely, responsive bid is the same for utility-affiliates and third-party bidders.

1. *Please identify topics that need additional research and/or discussion as part of the workgroup process (e.g., use of independent evaluator, sample scoring criteria or Request for Proposals (RFP)).*

Evaluation Process

It is necessary that the Staff and stakeholders spend more time discussing and researching the appropriate role of an independent evaluator or independent administrator (Item 5 of the Draft Guidelines). Specifically, Michigan EIBC and AEE strongly believe that if a utility self-built project or a utility-affiliate project is being considered, the utility and utility staff should not be involved in the bid evaluation process. It is unfair to all other bidders (even if separate staff are involved) to allow a utility to develop an RFP and then be allowed to evaluate responses to the RFP for which the utility itself or its affiliate submits a bid. This provides a clear unfair advantage to the utility project in terms of access to information, access to utility staff, and potential priority treatment.

In addition, it is important that Staff and stakeholders spend more time talking about whether it makes sense for the Commission to hire an independent evaluator for itself who would be separate from the evaluator or administrator engaged by the utility. If this practice were to be put in place, it is important to understand who would pay for this additional evaluator and whether this second evaluator would have authority with regard to the determination of bid winners. If utility self-built or utility-affiliate projects were considered as part of an RFP process and the utility nonetheless conducted the bid evaluation process, it would make sense for the Commission to independently employ an independent evaluator to assess the validity of the bid evaluation results. However, as described above, Michigan EIBC and AEE do not believe that situation should occur.

Stakeholder Review

Michigan EIBC and AEE strongly believe that only the Commission Staff, the utility running the RFP process, and the independent evaluator/administrator should review actual bid documents. These are some of the most sensitive materials that a bidding company submits to a utility and access by other parties should not be available. For that reason, care must be taken to not do anything that would make the bids subject to a FOIA request. It is not sufficient for a third party to sign an NDA to gain access to these materials or for the access to be limited to those who will not be submitting bids. Allowing access to actual bid materials by outside stakeholders would likely significantly suppress responses to the RFP.

1. *Are there additional experts or resources that we should consider as part of the workgroup process?*

In April 2020, Energy Innovation and the Southern Alliance for Clean Energy published a report titled, “Making the Most of the Power Plant Market: Best Practices for All-Source Electric Generation Procurement.”[[3]](#footnote-3) We would recommend that the Commission review this report to see what elements of these best practices apply in the Michigan context and consider reaching out the authors as experts on this topic.

In addition, we recommend that the Commission consider bringing in Ric O’Connell, Executive Director of GridLab. He is a recognized leader in energy technology and policy and has experience with competitive procurement for IRPs as well as the relative value of RFIs and RFPs.

1. *What processes should be instituted to ensure streamlined review of winning projects resulting from a procurement process that conforms to these guidelines?*

As described above, we believe it would be valuable to have further conversations on the role of an independent evaluator/independent administrator, including how such an entity can assist to streamline the review process. In addition, it may be helpful to require utilities to issue a post-bid report after an RFP to discuss problems encountered, potential improvements, and bid results (as appropriate).

1. *With respect to Item 8, and the three options listed below, to address the implementation of MCL 460.6(t)6:*
   1. *For any of the three options presented, are there any legal constraints?*

The objective of Chapter 460.6t(6) seems to be that market prices be obtained in order to inform the IRP. The statute does not necessarily require that any awards be made based on the RFP. Therefore, what is required is more in the nature of an RFI even though that is not the term used. However, the Commission and the utility can and should agree that if an RFP is issued before an IRP, it will not only inform the IRP for purposes of satisfying the statutory language, but will also lead to a contract for the winning bidder if and when the utility next adds new resources.

* 1. *For any of the three options presented, are there any timing concerns?*

“Option 2” may provide bidders with the most certainty and understanding of the expected RFP process after an IRP is approved. Option 2 would establish the process for future RFPs, giving bidders certainty (for the time period of the IRP) regarding when (at least approximately) and for how many MW/what needs a utility will be conducting RFPs.

* 1. *For any of the three options presented, are there any concerns with usefulness of the information that would be obtained?*

Procurement goals should be driven by the IRP, but informed by the pre-IRP RFP. With this in mind, “Option 1” or “Option 2” may make the most sense in that they allow the utility to gain a more accurate understanding of pricing to enable effective, accurate modeling in an IRP and then enables procurement of the appropriate resources after the IRP is approved.

Procurement decisions in an IRP based on an RFI would likely be more accurate than those based on cost numbers tabulated from national sources. However, it is possible that the cost numbers received in response to an RFI will not be as accurate as cost numbers received in response to an RFP would be simply because respondents may not spend as much time/effort on an RFI and the projects proposed may not all be deliverable.

It is important that any pre-IRP RFI is technology-neutral to enable the utility to gain a full understanding of the available technologies/prices.

* 1. *For any of the three options presented, are there any other reasons why they should not be pursued? (Please explain)*

Michigan EIBC and AEE do not have a response to this question at this time.

* 1. *Are there additional options or variations to the three options presented that should be considered?*

The Commission should consider whether a hybrid option is possible -- it may be that after the first IRP, a post-IRP RFP that results in contract(s) can serve as the pre-IRP RFP for the next cycle. This would only be possible if the timeline of the most recent post RFP aligned with the planning cycle of the next IRP. In addition, it would be important to ensure that the RFP used for this information was open to all technologies modeled by the utility in the IRP.

**DRAFT Competitive Procurement Guidelines for Investor-Owned Electric Utilities**

**Objective:** Develop a final guidance document/rule set for use by the Commission to ensure strong, technology-neutral market response and value for ratepayers through transparency, non-discriminatory access, certainty, and fairness in bidding processes that also provides participants with confidence in the process.

**Guiding Principles:** When making determinations on the reasonableness and prudence of all utility energy resource arrangements, the following guidelines will be used in the Commission’s evaluation of the process and resulting bids. This will include resources necessary for Voluntary Green Pricing Programs, for Renewable Portfolio Standards, to inform Integrated Resource Plans (IRP) or as a result of IRPs, etc. These guidelines do not apply to energy waste reduction or other demand-side programs administered by utilities.

**Draft Guidelines:**

1. All energy resources, including both short- and long-term supply and utility self-build projects, are arranged through competitive procurement. Bidding processes may be tailored based on the specific energy resource purpose or need.
2. Open, non-discriminatory treatment of resources:

a. Conduct open, non-discriminatory procurement process that fairly considers different ownership structures, resource types, and locations with transparency on how they will be evaluated (see minimum requirements below)

b. Bidding open to all resources and solutions that can meet system needs (e.g., energy, capacity, voltage support, ramping)

1. Comply with competitive bidding guidelines in FERC’s PURPA order 872 (July 2020), including referenced Allegheny case (*Allegheny Energy Supply Co, LLC*, 108 FERC 61082 at p 19 (2004))
2. Minimum RFP requirements and specification of evaluation criteria:
   1. Minimum eligibility requirements for bidders and resources
   2. Price and non-price factors and weighting to be used for project selection (RFP to

include scoring sheets with applicable weighting of evaluation factors)

* 1. Template PPA with terms and conditions
  2. Consideration of transmission and distribution availability and constraints, including

treatment of transmission congestion costs and inter-zonal pricing risk

* 1. As applicable, identify the parameters for inclusion of a financial compensation

mechanism, terminal value analysis or any other adjustment factor for utility self-build or build/transfer projects.

* 1. As applicable, assumptions for federal tax credit treatment for PPAs and utility self-build or build-transfer projects

1. Oversight and independence of bidding process:
   1. Separate staffing and information sharing between utility personnel or utility affiliate responding to RFP (submitting bids) and utility personnel conducting the RFP process (preparation of RFP, scoring/evaluation of results, and contract negotiation)
   2. Use independent evaluator to administer and oversee the competitive solicitation process (independent evaluator need not have final selection authority but should provide recommendations that could be considered for Commission review through audit process)
      1. Utility to provide access to all information for the independent evaluator to effectively carry out its roles and responsibilities
      2. Independent evaluator will provide utility with sufficient information to conduct a thorough internal review without disclosing the bidder’s identity
      3. Independent evaluator available and responsive to the MPSC throughout the process
   3. At its sole discretion and as part of the Commission’s regulatory review process, the Commission may hire its own independent evaluator in lieu of or in addition to the independent evaluator hired by the utility
2. Code of conduct compliance:
   1. All code of conduct rules shall be followed
   2. RFPs used to determine “market price” in affiliate transactions for resource supply pursuant to MPSC code of conduct rules

7. MPSC and Stakeholder Involvement:

a. Build in time for Staff and stakeholder review and input on draft RFP, review/scoring

processes, and PPA documents

b. Review of actual bids will be limited to individuals or parties that do not participate

directly in or have affiliations with organizations that have or will submit proposals

responding to utility RFPs

1. Continue to refine bidding processes over time based on feedback from bidders, the Commission, and stakeholders as well as experiences in other jurisdictions

8. Ensure bidding process aligns with resource planning and various project/contract approval processes, including requirements in MCL 460.6t(6) (see options below).

**Options for Alignment with MCL 460.6t(6):**

**Option 1: Pre-IRP RFP functions as a Request for Information (RFI) and Post-IRP RFP is specific to resource need identified in IRP proceeding.**

* Pre-IRP RFP would be an all-source RFP that would function more like an RFI
* Would allow for price and resource discovery to inform IRP
* Final RFP would take place post-IRP

o Pros

* + Would be responsive to modeling and the contested process taking place in the

IRP proceeding

o Cons

* + MCL 460.6t(6) uses the wording “RFP”

**Option 2: Pre-IRP RFP functions as an RFI, Post-IRP RFP is specific to resource need identified in IRP proceeding. RFP process/parameters specified in IRP with approval/modification by the Commission in the IRP proceeding.**

• Process used would mimic process identified within Option 1, but any deviations from the process would be vetted through a contested case process.

**Option 3: Pre-IRP RFP is a true all-source RFP which informs and drives the modeling and project selection in the IRP and will result in executable contracts following approval in IRP.**

• No post-IRP RFPs unless needed.

o Pros

* Adheres to exact language in MCL 460.6t(6)
* Relies on market response for resource acquisition vs. use of planning

models/projections to identify resource needs

o Cons

* Long lead-time for developers (> one year) which may introduce risk for bidders/increase costs
* Resource need identified in IRP may not match RFP results

1. Michigan Executive Order 2020-182 (September 23, 2020).  [↑](#footnote-ref-1)
2. Fritz Kahrl, “All-Source Competitive Solicitations: State and Electric Utility Practices”, Michigan Public Service Commission Workshop on Competitive Procurement, September 14, 2020, Grid Modernization Laboratory Consortium. [↑](#footnote-ref-2)
3. Available for download at https://cleanenergy.org/wp-content/uploads/All-Source-Utility-Electricity-Generation-Procurement-Best-Practices\_EI\_SACE.pdf. [↑](#footnote-ref-3)