

**199—40.2(476) Competitive resource acquisition procedure.**

**40.2(1) Procedures.** The utility shall use the following procedures to competitively acquire supply-side resources under its competitive bidding process. If an affiliate of the utility plans to submit bids for supply-side resources it will own or operate, it shall additionally adhere to the procedures specified in 199 IAC 40.4(476).

*a.* If a utility determines that it has a need for additional supply-side resources, it shall make a general public announcement indicating its needs and intentions. If an affiliate of the utility decides to bid once a request for proposals is announced, it will alert the manager at the public utility responsible for the request for proposals and bid process of its intention.

*b.* The utility shall provide a statement to the board indicating whether an affiliate of the utility desires, in the competitive resource acquisition process, to submit bids for supply-side resources it will own or operate.

*c.* If an affiliate of the utility desires to submit bids for supply-side resources, the utility shall select an independent evaluator from the board-approved list of evaluators to perform the functions specified in 199 IAC 40.4(3). The name of the independent evaluator selected for this project shall be filed with the statement to the board required in 199 IAC 40.2(1) "b." The utility shall provide the estimated cost to utilize the services of the independent evaluator as part of its statement. The independent evaluator shall be paid by the utility.

*d.* If a board-approved list of independent evaluators has not been established under 199 IAC 40.4(3) at the time of the proposed solicitation, the utility shall file a short list of names with the board with qualifications and potential conflicts of interest as part of its statement required in 199 IAC 40.2(1) "b." Interested parties and the board shall have 20 days to object to any names on the short list. Absent objection, the utility may proceed with any independent evaluator identified on the list. With objection, the board shall review the evaluators on the list and remove any names that it deems are not independent of the utility or the bidding process, or not qualified to perform the functions of the independent evaluator as identified in 199 IAC 40.4(3). Any board decision to remove names from the list will be issued within 15 days after the end of the objection period. If the board determines none of the persons listed are sufficiently independent or qualified to perform the functions of the independent evaluator, the process will begin again with a new list from the utility.

*e.* The utility shall publish and circulate an RFP that complies with the requirements of 199 IAC 40.5(476). The utility shall make the RFP readily available to interested persons by conspicuously posting the request on its Internet site or other public electronic bulletin board. The RFP shall be filed with the project's independent evaluator if one is required.

*f.* Within 30 days after publication of the RFP, the utility shall convene a bid conference open to all potential bidders. The bid conference shall be held no less than 20 days after it is noticed. At the bid conference, the utility shall answer questions posed by bidders concerning the RFP. Bidders may request and the utility may hold more than one bid conference if needed. However, in no event shall a bid conference be scheduled later than 30 days beyond the issuance of the RFP. The independent evaluator, if required pursuant to 199 IAC 40.4(3), shall attend the bid conference.

*g.* At the conclusion of the bid conference(s), the utility shall publish and circulate the date for submission of sealed bids. That date shall be no earlier than 30 days following the last bid conference.

*h.* The utility shall file its build or lease cost estimates required by 199 IAC 40.3(476) with the board seven days prior to the deadline for other bidders.

*i.* If an affiliate of the utility desires to submit a bid for supply-side resources it will own or operate, it shall submit its bid to the independent evaluator, the board, and the utility one day prior to the deadline for other bidders.

*j.* After the close of the deadline for the submission of bids, the utility shall commence a review to determine whether the bids are responsive to the minimum bid evaluation criteria specified in the RFP. All responsive bids shall be evaluated in accordance with the bid evaluation criteria specified in the RFP.

*k.* Upon completing its evaluation, the utility shall file with the board a short list of bidders whose bids the utility deems are most reasonable in meeting the resource needs of the utility. The utility's filing of its short-list selection shall include a report that is sufficiently detailed and rigorous to support

those selections, including an evaluation of all bids received and an explanation for why any bidders were excluded from the short list. The utility shall provide copies of the report to all bidders and other interested parties.

*l.* If an independent evaluator was required as part of the solicitation, the independent evaluator shall submit its certification of the fairness of the bidding process at the same time the utility submits its short list to the board.

*m.* Upon filing of the short-list selection and certification from the independent evaluator, if required pursuant to 199 IAC 40.4(3), interested parties shall have 15 days to file a complaint alleging that a bidder was excluded from the short list due to unfair treatment, significant errors in the selection process, or other similar reasons.

*n.* Absent complaints regarding the short-list selection, the utility may select a resource provider from the short list, choose the utility-build or lease option, or combine both options to meet its resource needs, whichever the utility deems most reasonable. Final selection and contract negotiations reside solely with the utility.

**40.2(2)** *Evaluation of bids.* The evaluation of bids submitted in a competitive bidding process must be based on the criteria identified in the utility's request for proposals. Bids should compete not only with other bids but also with the utility's own build or lease options, including plant life extensions, upgrades, and modifications.

**40.2(3)** *Contract negotiations.* The utility shall negotiate all contracts. A utility may negotiate a pricing structure that is suitable for the resource, considering such factors as the reliability of the resource, need for security of performance, the availability of other means of ensuring security of performance, the nature of the resource, the level of risk, and other appropriate factors. The utility shall negotiate contract terms that appropriately allocate the risks of future fuel costs and other resource costs between the resource provider and the utility.

**40.2(4)** *Utility reporting.* The utility conducting a bid solicitation under its competitive bidding process shall submit a written report to the board within 45 days of completion of its evaluation of bids. This report shall describe in detail the evaluation of bids and the utility's comparison of the bids received to its own utility-build or lease options. The report shall also include a copy of the utility's RFP, a detailed description of the utility's bid evaluation and selection process, and copies of all bids submitted to the utility in its bid solicitation.