

**199—40.4(476) Utility affiliate bids.**

**40.4(1) General requirements.** Any bid prepared by an affiliate of the utility shall comply with the selection criteria specified in the RFP and with board rules governing affiliate transactions (199 IAC 31). The utility may not give preferential treatment or consideration to a bid prepared by an affiliate of the utility. To ensure a level playing field for all bidders, the utility shall comply with its standards of conduct as required by 199 IAC 40.4(2) and shall hire an independent evaluator to ensure compliance with the standards of conduct prior to the drafting of the RFP.

**40.4(2) Standards of conduct.** Each utility must establish standards of conduct to ensure that all transactions between the utility and its affiliates are conducted on an arm's-length basis. The utility's standards of conduct shall be filed with the board prior to any solicitation under the utility's competitive bidding process. At a minimum, the utility's standards of conduct shall include the following:

*a.* The utility shall maintain full written records and notes of all communications between the utility and the bidding affiliate and between the utility and the independent evaluator, as well as all other bid-related communications.

*b.* The utility shall ensure that the bidding affiliate has access only to the same bidding information at the same time as other bidders.

*c.* The utility's RFP and evaluation team shall not share with the bidding affiliate any information regarding the request for proposals, standard contract, drafts of either document, information contained in those documents, or any information about the preparation of those documents unless and until such information is available to all other bidders in the solicitation.

*d.* The utility shall establish for each RFP and bidding process a single point of contact for all questions about bids and evaluations.

*e.* The utility shall keep in a secure location all requests for proposals and contract drafts, related bid documents, any analyses, notes, communications, evaluations and any other written material concerning the RFP, standard contracts, proposals, and all other documents related to the bidding process.

*f.* The utility's evaluation team members shall brief management regarding confidential information about the bidding process only on a need-to-know basis. Such briefings will not occur in general staff meetings or other group meetings.

*g.* The utility will make all pertinent employees aware of its procedures that must be followed between the public utility and the bidding public utility affiliate or division for confidentiality of RFPs, standard contracts, and other documents pertinent to the bidding process.

*h.* The utility shall not share resources with an affiliate bidder unless such resources are also made available to other bidders.

*i.* The utility shall not contract on behalf of an affiliate bidder for the provision of services and equipment that are not available to other bidders.

*j.* The utility shall not withhold information about Clean Air Act emissions allowances from potential bidders in order to circumvent or hinder the competitive bidding process.

*k.* Employees of any bidding affiliate are prohibited from participating in the evaluation process.

**40.4(3) Independent evaluator.** The utility shall use an independent evaluator if there is a likelihood that an affiliate's bid may be included among the bids to be evaluated. The utility shall maintain a written record of communications and contacts with the independent evaluator.

*a. Short list of approved independent evaluators.* A board-approved list of independent evaluators shall be compiled using the following process:

(1) The utility shall file with the board a list with qualifications of at least five independent evaluators it deems to be appropriate in auditing the bidding and selection process under its competitive bidding process. The utility shall reveal each listed evaluator's associations with the utility or any of its affiliates, divisions, or subsidiaries that could create a potential conflict of interest.

(2) Upon the utility's filing of the list, any interested party shall have 20 days to object to either the independence or the qualifications of one or more evaluators included on the list.

(3) After the time of objection has passed, the board shall approve a final list of potential evaluators that it deems to be independent and qualified to perform the functions of the independent evaluator as specified in 199 IAC 40.4(3) "b."

*b. Functions of the independent evaluator.* The functions of the independent evaluator shall include the following:

(1) Determine whether the utility complied with its standards of conduct as required by 199 IAC 40.4(2).

(2) Determine whether the utility's RFP complies with the minimum requirements specified in 199 IAC 40.5(476).

(3) Determine whether the utility treated and considered its affiliate's bid in the same manner it treated and considered other bids intended to meet the same resource needs.

(4) Determine if the transaction provides the utility's affiliate any unfair competitive advantage by virtue of its affiliation or association with the utility.

(5) Certify with the board at the time the utility files its short list of potential providers that the process was fair and complied with the utility's standards of conduct as required by 199 IAC 40.4(2).

(6) Any other determinations or certifications the evaluator deems relevant.