

## EXHIBIT 3

Hawaiian Electric Companies' Code of Conduct pertaining  
to the Implementation of a Competitive Bidding Process  
for the Stage 3 Hawai'i RFP

**Exhibit 3**  
**The Hawaiian Electric Companies' Code of Conduct**

Hawaiian Electric Company, Inc., Maui Electric Company, Ltd., and Hawai'i Electric Light Company, Inc. (each a "Company" and collectively, the "Companies") Code of Conduct Pertaining to the Implementation of a Competitive Bidding Process for the Stage 3 RFPs

**Purpose**

The Framework for Competitive Bidding ("Framework"), adopted on December 8, 2006, by the Public Utilities Commission of the State of Hawai'i (the "Commission") pursuant to Decision and Order No. 23121 (Docket No. 03-0372, Instituting a Proceeding to Investigate Competitive Bidding for New Generating Capacity in Hawaii), requires that the utility develop and follow a code of conduct in order to ensure the fairness and integrity of the competitive bidding process, in particular where a utility or its affiliate seeks to advance a system resource proposal in response to a Company RFP (as defined below). The Framework, at Section III.A.4, requires the utility to submit to the Commission for review and approval (subject to modification, if necessary, by the Commission), a Code of Conduct prior to the commencement of any competitive bid process under the Framework.

This *Code of Conduct Pertaining to the Implementation of a Competitive Bidding Process for the Stage 3 RFP* ("Code of Conduct") outlines the policies and general procedures under which the competitive bidding process for system resources will be undertaken by the Company to ensure that the competitive bidding process is undertaken in a fair and unbiased manner, that all proposers have access to the same information to ensure no proposer has an unfair advantage, and that the Hawaiian Electric Development Team and/or affiliate options do not have any unfair competitive advantage or enjoy undue preference over third-party bids.

**Definitions**

- Affiliate – Any person or entity that possesses an "affiliated interest" in a utility as defined by section 269-19.5, Hawaii Revised Statutes ("HRS"), including a utility's parent holding company but excluding a utility's subsidiary or parent which is also a regulated utility.
- Affiliate Team – Employees and consultants of an Affiliate of the Company who prepare a proposal to be submitted to a Company in response to a Company RFP.
- Code of Conduct Acknowledgement – The Competitive Bidding Code of Conduct Acknowledgement of Receipt form required to be executed acknowledging review of, and agreeing to abide by, this Code of Conduct and its RFP Code of Conduct Procedures Manual.
- Code of Conduct Procedures Manual – The Company-prepared manual required by the Framework which implements procedures, in accordance with the policies outlined in the Framework and this Code of Conduct, for communications within the Company between the Company RFP Team, Shared Resources and Unassigned Company Resources and between the Company and proposers into an RFP, including a Hawaiian Electric

Development Team and/or Affiliate Team.

- Communications Log – A written record to note activities and/or information shared between the Company RFP Team or Hawaiian Electric Development Team with Shared Resources or Unassigned Company Resources, accessed via the RFP Communication Tool Kit SharePoint Site.
- Companies – means Hawaiian Electric Company, Inc., Maui Electric Company, Ltd., or Hawai‘i Electric Light Company, Inc., each a Hawai‘i corporation.
- Company – Hawaiian Electric Company, Inc., Maui Electric Company, Ltd., or Hawai‘i Electric Light Company, Inc., as the context so requires.
- Company Executive in Charge – The Company executive responsible for ensuring compliance with this Code of Conduct and serving as the point of contact for the Independent Observer for reporting any violations by the Company of the Code of Conduct. The Company Corporate Compliance Officer shall remain responsible for the Company independent corporate code of conduct and may support compliance matters and questions arising with employees, agents and other representatives of the Company, e.g., conflicts of interest, with respect to this Code of Conduct.
- Company RFP – A written request for proposal issued by the electric utility to solicit bids from interested third-parties, and where applicable from the utility or its affiliate, to supply a future system resource or a block of system resources to the utility pursuant to the competitive bidding process.
- Company RFP Team – The Company personnel and outside consultants responsible for the development of the Company’s RFP conducted under the Framework and the evaluation of bids submitted in response to this RFP. Subject to the transfer rules specified in the Company Code of Conduct Procedures Manual, the Company RFP Team will have fixed team members who will not have any involvement with the Hawaiian Electric Development Team for the RFP.
- Confidential Information – Any non-public information developed and provided by the Company (e.g., proprietary system information) or proposers during the RFP process (such non-public information may include, for example, the identity of competing proposers, and their technical, trade or financial information). This term includes any material non-public information regarding the RFP process developed for and used during the competitive bidding solicitation process, such as the evaluation process or criteria. Confidential Information includes Confidential Resource Proposal Information and Confidential RFP Process Information but does not include public information, such as information in the Company’s public filings with the Commission.
- Confidential Resource Proposal Information – Any non-public information developed and provided by the Hawaiian Electric Development Team, its affiliates or third-party proposers during the RFP process (such non-public information may include, for example, the identity of competing proposers, and their technical, trade or financial information).
- Confidential RFP Process Information – Any non-public information regarding the RFP process developed and used during the competitive bidding solicitation process.
- Consumer Advocate – The Division of Consumer Advocacy of the Department of Commerce and Consumer Affairs, State of Hawai‘i.
- Director of Renewable Acquisition – The supervisor of the Division that will oversee the Company’s competitive bidding process.
- Energy Contract Manager – The staff position(s) within the Company’s Renewable Acquisition Division responsible for managing the Company RFP Team. The Energy Contract Manager shall be a member of the Company RFP Team.
- Hawaiian Electric Development Team – The Company personnel and outside consultants

responsible for the development of the Hawaiian Electric Development Team's response to the RFP. Subject to the transfer rules specified in the Company Code of Conduct Procedures Manual, the Hawaiian Electric Development Team will have fixed team members who will not have any involvement with the Company RFP Team for the RFP.

- Independent Observer – The neutral person or entity either appointed by the Commission or, at the direction of the Commission, identified and retained by the utility to monitor the utility's competitive bidding process, and to advise the utility and Commission on matters arising out of the competitive bidding process, as described in Part III.C of the Framework.
- Manager of Energy Procurement – The supervisor of the department within the Company's Renewable Acquisition Division responsible for directing the resources responsible for the implementation of the competitive bidding process pursuant to the Framework. The Manager of Energy Procurement will report to the Director of Renewable Acquisition on the status of the competitive bidding process and shall be a member of the Company RFP Team.
- Non-Wires Alternative – An electricity grid project that uses non-traditional transmission and distribution (T&D) solutions, such as distributed generation (DG), energy storage, energy efficiency (EE), demand response (DR) and grid software and controls, to defer or avoid the need for conventional transmission and/or distribution infrastructure investments.
- Roster – A consolidated list of members that comprise the Company RFP Team, Hawaiian Electric Development Team, Shared Resources and Unassigned Company Resources located in the RFP Communication Tool Kit SharePoint Site. Names and roles of Company employees and consultants will be identified.
- Shared Resources – Company employees and consultants who, because of the scarcity of their expertise within the Company, are designated and authorized to provide information or input to both the Company RFP Team and the Hawaiian Electric Development Team (but not any Affiliate Team) and is not a resource dedicated to either team. For example, Shared Resources may include an environmental attorney and members of the Company's Risk Management Department.
- Unassigned Company Resources – Company employees unassigned to an essential team that may be called upon by the Company RFP Team and/or the Hawaiian Electric Development Team (but not any Affiliate Team) to assist in meeting unforeseen tasks for the RFPs or the Hawaiian Electric proposals. For example, the RFP team may be unable to evaluate an unforeseen technical specification included in a bid. In that event, the RFP team would need to request assistance from a Company employee or a consultant that is not already assigned to an essential team and possesses the specific expertise. Such personnel are intended to assist the requesting team only in an ad hoc manner, limited in scope and purpose to the particular task required.

### **Implementation and Application of the Code of Conduct**

Employees of the Company who will be involved in the competitive bidding process must comply with the Code of Conduct. Members of the Company RFP Team, Hawaiian Electric Development Team, Shared Resources and Unassigned Company Resources must implement the Code of Conduct in order to be eligible to evaluate bids or participate in the development and submission of a Company system resource option.<sup>1</sup> The Code of Conduct addresses: (1) communication

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<sup>1</sup> Note: Shared Resources and Unassigned Company Resources are not eligible to evaluate bids. See *Rules for Evaluators* herein.

requirements and procedures associated with the relationship between utility employees; (2) communication requirements and procedures associated with the relationship between utility RFP personnel and proposers; and (3) communication requirements associated with the relationship between Company management and the various entities involved in the competitive bidding process. The Code of Conduct Procedures Manual implements the requirements of the Framework and this Code of Conduct and provides further requirements for such communications.

The Code of Conduct also includes the procedures for addressing cases where limited resources and expertise of the Company may be shared by the Hawaiian Electric Development Team and Company RFP Team. While the Company will make every reasonable effort to develop internally separate teams for evaluating the bids and developing the Hawaiian Electric Development Team options, the small size of the Company and limitation of resources and expertise generally will require specialized services, information exchange and sharing of resources in certain limited circumstances, such as in the course of resource planning activities. Where the Company has identified these limited resources and expertise, the Company has designated such resources and expertise as Shared Resources with strict communications restrictions and the requirement to maintain the Communication Log of all communications with either team.

Finally, this Code of Conduct does not apply to communications and information shared between utility employees in the normal course of their employment that is not associated with any active RFP.

### **General Rules**

1. Competitive Bidding Code of Conduct Acknowledgement of Receipt. Any employee (whether full-time, part-time, temporary or contract) or consultant involved in the competitive bidding process as a member of the Company RFP Team or the Hawaiian Electric Development Team, or designated as a Shared Resource or Unassigned Company Resource, shall comply with the rules of conduct in this Code of Conduct and the procedures outlined in the Code of Conduct Procedures Manual and must sign the Code of Conduct Acknowledgement.
2. Separation of Teams; No Transfer Between Teams. To enhance the opportunity to maintain separation of resources between the Company RFP Team and the Hawaiian Electric Development Team, while recognizing the potential problems associated with limited resources, the following procedures shall be followed. The Company RFP Team will have no involvement with the Hawaiian Electric Development Team with respect to the RFP. During the pendency of a stage or phase of any RFP, employees may not transfer between teams. Employees will only be allowed to transfer to the other team after meeting the conditions and requirements identified in the Code of Conduct Procedures Manual. Other employees, not a member of any team, could serve as Shared Resources or Unassigned Company Resources, but will be subject to the conditions defined in General Rules 7 and 8, respectively, below.
3. No Involvement with Affiliate Teams. Affiliate Teams shall be considered and treated as a separate third-party proposer for all purposes within the RFP. There shall be no communication or interaction between the Company RFP Team and any Affiliate Team except as may be permitted under the Framework, this Code of Conduct or the Code of Conduct Procedures Manual and consistent in all respects with communications and

interactions permitted with unaffiliated third-party proposers. Affiliate Teams shall have no access to, interaction or communications with Shared Resources or Unassigned Company Resources for the purpose of completing a proposal in response to the RFP. Affiliates of the Company shall also be subject to the terms, conditions and restrictions specified in the Company's Affiliate Transaction Requirements issued by the Commission.<sup>2</sup>

4. Duty Not to Disclose Confidential Information Across Teams. Members of the Company RFP Team may work with members of the Hawaiian Electric Development Team or with an Affiliate on other projects not related to the Company RFP, but are prohibited from discussing or disclosing, directly or indirectly through a conduit, Confidential Information with: (i) the Hawaiian Electric Development Team and any Affiliates except in accordance with the procedures outlined in this Code of Conduct and the RFP, or (ii) any other Company employee, individual or entity without a business need to know. No transfer of an employee of the Company, including to an Affiliate, shall be used to circumvent this prohibition to create a conduit for the prohibited transfer of Confidential Information.
5. Work Locations. Members of the Company RFP Team and the Hawaiian Electric Development Team do not have to be physically separated from each other but members of each team must take all reasonable measures to keep all Confidential Information (including electronic data) pertaining to the competitive bidding process confidential.
6. Roster. The Roster for the Company RFP Team, the Hawaiian Electric Development Team, Shared Resources and identified Unassigned Company Resources will be maintained by the Company and provided to the Independent Observer upon request. All team members will be specifically identified by name and role.
7. Managing of Shared Resources. Certain Company resources, such as select staff from various functional areas of the Company (e.g., generation and transmission planning, engineering, system and power plant operations, environmental, financial analysis, risk management, etc.) that are not members of any team, may be treated as a shared resource to perform services for the Company RFP Team and to carry on their regular functions throughout the resource planning process (including the development of the utility's Parallel Plan or Contingency Plan as defined in the Framework), which may require communication with or services performed for the Hawaiian Electric Development Team. Shared Resources may perform these services subject to complying with the Code of Conduct and the Code of Conduct Procedures Manual. Any information received by employees serving as a Shared Resource from their communication with one team (either the Company RFP Team or Hawaiian Electric Development Team) will not, either directly or indirectly through others, be provided to members on the other team or to other proposers, except through the formal RFP communication process. A written record of the time, date and substance of all conversations, data and written material directly or indirectly exchanged with any member of the Company RFP Team or the Hawaiian Electric Development Team that pertain to the Company RFP, shall be maintained on the Communication Log. The Independent Observer will have contemporaneous access to the Communication Log. In any limited case where information or resources are required to be provided by one team to another, and because of confidentiality or proprietary reasons, cannot be disseminated through the communication means specified in the RFP, all such

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<sup>2</sup>See Order No. 36112, issued January 24, 2019, in Docket No. 2018-0065, establishing those certain Affiliate Transaction Requirements for the Company and its Affiliates.

communications will be directed through the Energy Contract Manager copied to and with direct oversight by the Independent Observer.

8. Managing of Unassigned Company Resources. Certain Unassigned Company Resources may be requested to perform services for either the Company RFP Team or the Hawaiian Electric Development Team on an *ad hoc* basis that does not necessitate such resource being added to the team requesting assistance. Such Unassigned Company Resources may provide such services subject to complying with the Code of Conduct and the Code of Conduct Procedures Manual. In connection with providing such services, a written record of such services shall be maintained in the same manner and fashion as the written records required of Shared Resources on the Communication Log. The Independent Observer will have contemporaneous access to this Communication Log.
9. Access to Information During Bidding Period. It is the objective of the Company that all proposers, as well as the Hawaiian Electric Development Team and any Affiliate Team, receive access to the same RFP information at the same time. All communications regarding the RFP will be provided to all proposers through the communication means specified in the RFP or other specialized means of access established for purposes of administering the RFP. No members of the Hawaiian Electric Development Team or Affiliate Team will have access to such information before it is distributed to all potential proposers.
10. Duty Not to Disclose Confidential Resource Proposal Information During RFP Process. All Confidential Resource Proposal Information shall be held in confidence during the RFP evaluation and selection process and negotiation of contracts with selected proposers (if necessary), and shall not be discussed or exchanged by the Company RFP Team with any party except the proposer providing the information, Company management personnel responsible for resource decisions, Company RFP Team members, the Independent Observer, and the Commission and the Consumer Advocate, and their respective staffs and consultants. Dissemination of such Confidential Resource Proposal Information shall be limited, to the extent possible, to those with a business need to know.
11. Prohibition of Hawaiian Electric Development Team and Affiliates from Advance Disclosure of Confidential Resource Proposal Information to Company RFP Team. The Hawaiian Electric Development Team and any Affiliate Team are prohibited from providing team members of the Company RFP Team with any Confidential Resource Proposal Information pertaining to the development of a Hawaiian Electric Development Team or Affiliate Team resource option in response to a Company RFP until after that proposal is officially submitted.
12. Treatment of Information Requests from Hawaiian Electric Development Team and Affiliate Team. The Company RFP Team will treat all requests from the Hawaiian Electric Development Team and Affiliate Team for information pertaining to the Company RFP in the same manner as requests received from non-affiliate entities. The Hawaiian Electric Development Team and the Affiliate Team will be required to submit all questions in writing and will receive a response via the communication means specified in the Company RFP, as would any other proposers.
13. No Preferential Treatment. The Company RFP Team, when evaluating proposals will give all proposals the same consideration within the parameters of the particular RFP and the eligibility, threshold and evaluation requirements and criteria contained therein. Hawaiian

Electric Development Team options and Affiliate Team bids will not be given any preferential or discriminatory treatment.

14. Applicability of Code. Any employee or consultant who directly or indirectly takes part in the conduct of the competitive bidding process, whether an employee of the Company or of a company under contract, shall comply with the requirements for treatment of Confidential Information obtained during the competitive bidding process. Such employee or consultant shall execute the Acknowledgement required under General Rule 1 above.
15. Rules for Evaluators. Any employee or consultant taking part in the evaluation of bids or in the process of selecting system resources (the “evaluator”) must comply with the following rules and eligibility requirements:
  - a. In carrying out his or her responsibilities, the evaluator must make his/her decision based on the merits of the proposal and irrespective of all partisan considerations;
  - b. The evaluator must not accept any gifts, favors, entertainment or other advantages from any proposers;
  - c. The evaluator must hold in confidence all Confidential Information obtained through the bidding process;
  - d. Should the evaluator be directly contacted by any proposer, including members of the Hawaiian Electric Development Team or Affiliate Team, he/she must promptly relate such contact to the Energy Contract Manager, and, as applicable, the Independent Observer, if such contact could be deemed to have compromised the evaluation process.
  - e. Evaluators shall be members of the Company RFP Team, separated into price and non-price evaluation teams. See *Code of Conduct Procedures Manual* for details.
  - f. Shared Resources and Unassigned Company Resources shall not be permitted to participate, or advise the Company RFP Team, in evaluating bids.
16. Company Officer Certification of Code of Conduct Compliance. A Company officer, identified to the Independent Observer and the Commission, shall have the written authority and obligation to enforce the Code of Conduct. Such officer shall certify, by affidavit, Code of Conduct compliance by all employees participating in a specific RFP process after each specific RFP process ends.
17. Term. This Code of Conduct shall remain in effect until: (a) the final contract(s) for the RFP conducted under the Framework with the successful proposer(s) is/are executed or when written notice of termination of the RFP to be conducted under the Framework is provided by the Manager of Energy Procurement or his/her designee to the Independent Observer and the Commission; and (b) a certification of Code of Conduct compliance by all employees participating in the specific RFP process is submitted by affidavit by the Company Executive in Charge. The Code of Conduct shall remain in effect through all stages or phases of a particular RFP, regardless of the length of time between such stages or phases in the RFP.