

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

---- In the Matter of ----)
)
PUBLIC UTILITIES COMMISSION) DOCKET NO. 2017-0352
)
To Institute a Proceeding)
Relating to a Competitive)
Bidding Process to Acquire)
Dispatchable and Renewable)
Generation.)
_____)

ORDER NO. 36356

PROVIDING GUIDANCE ON THE HAWAIIAN ELECTRIC COMPANIES'
PHASE 2 DRAFT REQUESTS FOR PROPOSALS FOR
DISPATCHABLE AND RENEWABLE GENERATION

FILED
2019 JUN 10 P 2:06
PUBLIC UTILITIES
COMMISSION

A.

Procurement Targets and Scope

Phase 2 of this procurement process provides an opportunity to accelerate renewable energy procurements, fulfilling the need for energy, capacity, and other grid services, while also providing cost benefits to customers.

The commission appreciates the revised scope and procurement targets provided in the HECO Companies' Comments regarding the Phase 2 Draft RFPs, and believes the expanded targets represent a significant improvement over the initial targets provided in the Companies' April 1, 2019 filing.¹⁶

	APRIL 1 FILING		MAY 2 STATUS CONFERENCE		PROPOSED FINAL	
Island	MWh	MW of Energy Storage	MWh	MW of Energy Storage	MWh	MW of Energy Storage
Oahu	160,000	200 MW (438,000 MWh)	590,000	200 MW (438,000 MWh)	1,300,000	200 MW (438,000 MWh)
Maui	65,000	40 MW (58,000 MWh)	295,000	40 MW (58,000 MWh)	295,000	40 MW (58,000 MWh)
Hawaii	70,000	18 MW	70,000	18 MW	70,000 - 444,000	18 MW

However, the commission remains concerned that the Companies' approach to replacing energy currently produced by the

¹⁶HECO Companies' Comments at 4.

AES Power Plant on Oahu and the Kahului Power Plant on Maui with oil fired generation could have significant implications for customers, resulting in increased costs and an unnecessary continued reliance on fossil fuels. In an effort to maintain an efficient process, the commission directs the HECO Companies' to work with the IOs to ensure the Phase 2 RFPs solicit renewable energy, capacity, and grid services commensurate with grid needs.¹⁷ The commission intends to address any additional renewable energy and capacity needs through the expansion of existing distributed energy customer programs and tariffs (i.e., DER, DR, and CBRE tariffs).

Regarding Hawaii Island, the commission appreciates the Companies' observations regarding the uncertain timing and availability of both the Puna Geothermal Ventures ("PGV") and Hu Honua Bioenergy ("Hu Honua") facilities, and understands the Companies' proposed approach to target different amounts of

¹⁷The Companies should also carefully consider and discuss with the IOs the technical and performance requirements in the RFPs. The RFPs should avoid including overly conservative technical and performance requirements where such requirements are not justified. For example, at the May 2, 2019 Status Conference, the Companies discussed establishing the energy storage duration requirement for Oahu consistent with the duration requirement in Phase 1 and the requirement for Maui in Phase 2. However, the Companies' May 20 Comments do not appear to reflect that commitment. The commission does not intend to pass on to customers higher rates due to unsupported or unduly restrictive technical and performance requirements established in these RFPs.

variable renewable dispatchable generation in the event that one or both of the facilities are not placed into service.¹⁸

However, the commission believes the broad, proposed range of procurement targets for Hawaii Island may affect bidders' willingness to submit bids due to concerns regarding market certainty and the complexity of bid requirements. To increase the likelihood of robust participation in the Hawaii Island RFP, the commission strongly encourages the Companies to solicit the maximum number of MWh proposed (444,000 MWh, see table above) in this solicitation. If circumstances arise where it is determined that procurement of the full amount will not provide benefits to customers, the Companies should not feel obligated to procure the entire amount. However, an approach designed to procure the maximum amount of energy and capacity at the outset, will likely result in a more competitive procurement process overall. In the event specific HELCO system needs are revised during the course of the Phase 2 RFP process, the Companies can provide any updated information to the IOs during the Companies' evaluation process.

¹⁸HECO Companies' Comments at 4-5.

B.

Portfolio Selection and Evaluation

The commission views the integrity of the evaluation and selection process as essential for the success of Phase 2. As such, the commission expects the Companies to work with the IOs to explicitly document the criteria utilized for selecting a portfolio during Phase 2, as well as the criteria for evaluating a given portfolio and selecting specific projects.

Additionally, the commission fully expects the Companies to update and detail, to the extent possible, the forecasts and assumptions used by the Companies in their portfolio evaluation and selection processes for Phase 2. These forecasts and assumptions should include all Phase 1 projects in the base case for both the Draft Renewable and Grid Services RFPs, as well as updated fuel price forecasts, load forecasts, and capital cost assumptions for future capital investments. Moreover, the commission stresses the importance of considering the results of the evaluation and project selection for the Grid Services RFP prior to the selection of the final award group for the Renewable

RFP.¹⁹ Under this approach, the Companies will be more likely to procure a low-cost portfolio of resources for customers.²⁰

The Companies should also conduct sensitivity analyses as part of their evaluation and selection processes, including but not limited to, sensitivity analyses around fuel prices, replacement capital costs, and the value of various grid services.

Finally, the commission encourages the Companies, in conducting their portfolio evaluation and selection process, to ensure that stand-alone energy storage charged with fossil fuels is the last resort in meeting any capacity needs. The Companies should select projects including renewable generation, renewables paired with storage, and DER from the Grid Services RFP to the greatest extent possible, to ensure that portfolio costs are minimized. While the commission recognizes the potential value of standalone storage in Phase 2, the commission remains concerned about the possibility that any

¹⁹See HECO Companies' Comments at 19 ("...the Companies propose to complete the evaluation and project selection for the Draft Grid Services RFP prior to the detailed evaluation of the Draft Renewable Energy RFPs.").

²⁰As stated in Order No. 36187, the commission is not requiring the Companies to conduct an "all-resource" procurement. However, the commission expects the results of any Grid Services procurement to inform the portfolio selected in the Renewable RFP. The commission notes that this appears to be consistent with the approach the Companies have proposed for the HELCO system. See HECO Companies' Comments at 19.

standalone storage resources procured may be charged with fossil fuel generation at a significant cost to ratepayers.

The commission recognizes that the Companies are currently refining the evaluation process, and directs the Companies to continue working with the IOs to update the RFP language reflecting the Companies' evaluation processes, and finalize the Companies' internal protocol documents, in a manner that is consistent with this guidance.

C.

Procurement Timeline

The commission is aware of the compressed timeframe to adequately address the need for replacement capacity in advance of the expiration of the AES PPA on Oahu in September 2022, and the retirement of Kahului Power Plant on Maui, ahead of the expiration of the facility's environmental permits.²¹

In response to the commission's concerns regarding the procurement timeline, the Companies have proposed: (i) MWh energy targets set forth in the Companies' April 1, 2019 filing will be required to have a GCOD of December 31, 2022 or earlier ("Initial Energy MWh Targets") and (ii) the increased MWh energy targets provided in the Companies' May 20 filing could bid a GCOD of

²¹HECO Companies' Comments at 12.

December 31, 2024, or earlier, with a preference being given in the evaluation to projects with an earlier GCOD date ("Expanded Energy MWh Targets").²² In response to the Consumer Advocate's concern regarding the need to have an in-service date of March 31, 2022 on Oahu for replacement capacity for the AES, the Companies have explained that "in order to ensure reliability of service through the transition, it was necessary to have a period to account for any potential delays in the selected project(s) reaching commercial operations, as well as have a seasoning period for the replacement of resources far enough ahead of the removal of the existing firm resources."²³ However, the Companies have provided that they are "willing to move the GCOD to June 1, 2022, with certain conditions."²⁴

The commission views the procurement timeline for Phase 2 as a critical component to the overall success of Phase 2. The timelines offered to the potential bidders will largely determine the number of proposals received and may impact the diversity of the projects proposed. The commission agrees with the concerns raised by many stakeholders that the current proposed timeline will affect competition, potentially resulting in a

²²HECO Companies' Comments at 13.

²³HECO Companies' Comments at 14.

²⁴HECO Companies' Comments at 14.

limited number of cost-effective bids to meet the replacement needs created by the expiration of the AES PPA. To address these concerns, the commission accepts the Companies' proposal to move the GCOD for projects seeking to replace the capacity for the AES plant to June 1, 2022. For all other projects, the Companies should allow bidders the option to propose projects with an in-service date of 2022 or up and through 2025. As there has been no specific reason stated for a 2024 GCOD, the commission believes the additional time provided will be beneficial for increasing competition.

As such, the Companies should prioritize, but not require, projects with GCODs no later than December 31, 2022, but should consider projects with GCODs as late as the end of 2025. In addition, in their upcoming Draft Final RFP filing, discussed further below, the Companies should explain how the preference for projects with a 2022 GCOD will be implemented. The commission is supportive of a potential non-price criterion for projects with an earlier GCOD, however, as stated above, the Companies should ensure that the Phase 2 RFPs clearly detail how each bid will be evaluated under different GCOD scenarios. Consistent with the commission's previous guidance regarding the necessity of transparency in the Companies' selection and evaluation processes, the Companies should provide potential bidders with a clear explanation of how

proposed projects with an earlier proposed GCOD will be evaluated using both price and non-price criteria.

D.

Fair Competition

1.

Self-Build Proposals

The commission continues to be concerned about the lack of detail regarding the HECO Companies' proposed evaluation of self-build proposals ("SBO") and how these bids will be compared against other Independent Power Producer ("IPP") bids. Following the above-discussed Status Conferences and the commission's review of the record addressing Phase 2 of this docket, it is evident that there are a number of outstanding details for the Companies to address related to the treatment of an SBO. The lack of clarity in this area presents a serious risk to the perceived fairness of the Phase 2 procurement process and the commission is concerned that the lack of insight on this topic will discourage participation from potential bidders.

As a result, the commission is inclined to prohibit any SBO proposals until the Companies can detail their processes and methodology to evaluate these bids on a fair basis. The commission will allow the Companies to make a final proposal regarding treatment of SBO bids in the Draft Final RFP filing that the

commission directs the Companies to make pursuant to this Order, below. The IOs will review the Companies' proposed SBO process and provide the commission with an independent assessment of whether the process is fair and includes adequate protections for customers. In their Draft Final RFP filing, the commission will be looking for a detailed discussion of the specific mechanisms the Companies intend to utilize as safeguards, and details regarding the Companies' evaluation process to ensure that self-build and independent proposals are fairly compared.

2.

Company-Owned Sites

The Companies' Comments regarding the Phase 2 Draft RFPs state that the Companies intend to offer three Company-owned sites, one each on Maui, Oahu, and Hawaii Island, to prospective bidders in the Renewable RFP.²⁵ As described by the Companies, these sites are offered for siting storage-only projects.²⁶

The commission is supportive of this proposal and will require that, to the extent the Companies plan to utilize any Company-owned sites for an SBO proposal, those sites must also be made available to all other potential bidders.

²⁵HECO Companies' Comments at 21.

²⁶HECO Companies' Comments at 21.

Grid Services Code of Conduct

Although the Companies have stated that they do not intend to submit a Self-Delivery Option ("SDO") for the Grid Services RFP, in an abundance of caution, the commission directs the Companies to finalize the Grid Services Code of Conduct, as the Companies have committed to in their comments regarding the Phase 2 Draft RFPs. If the Companies do not include language that provides protections against the possibility for self-dealing or unfair competition regarding self-build/self-delivery or affiliate options, then an SDO and/or affiliate participation shall not be permitted in the Final Grid Services RFP.²⁷

E.

Power Purchase Agreements

In both the Draft Renewable and Grid Services RFPs, HECO has proposed non-negotiable PPAs. Many stakeholders have

²⁷HECO Companies' Comments at 20 ("Accordingly, the Companies have committed to developing a specific Grid Services Code of Conduct for this and future Grid Services RFPs. A preliminary draft has been developed and is currently under internal review. Once completed, a proposed final draft will be presented to the Commission for approval. In the interest of time and current circumstances, the Grid Services Code of Conduct will not address measures regarding any self-build/self-deliver options, as there is no present intent for the Companies to venture into this opportunity.").

raised this as an issue that has the potential to negatively affect the overall procurement process.²⁸ The commission underscores that the Phase 1 PPAs that were ultimately approved by the commission on March 25, 2019, went through several rounds of robust negotiations and did not result in standardized contracts among developers, nor any commission-approved "model" PPA.

The commission does not support the "non-negotiable" approach, and directs the Companies to revise the RFP documents to allow for negotiation of the PPAs as a whole. As stated throughout the instant proceeding, the commission intends for this procurement effort to result in cost effective renewable energy projects that benefit utility customers. If bidders are not able to negotiate contract terms that may materially impact the pricing or other important facets of proposed projects, there is a risk that participation in the procurement process may be limited and may work against the intended effect of this solicitation. The Companies may require bidders to explicitly provide potential revisions to the PPA as part of their bids, and may evaluate, using non-price criteria similar to the process used in Phase 1, the extent to which such potential changes would alter the risk allocation between customers and bidders.

²⁸See Clearway Comments at 3; HCPA Comments at 1-2, 7-9.

Additionally, several stakeholders have expressed concern with the Companies' PPA provision regarding "shared representatives" (Section 1.7.3). As written, the RFPs will prohibit "unaffiliated proposers" from using shared consultants, contractors, attorneys, or other representatives to prepare proposals or engage in contract negotiations.²⁹ The commission is aware of the limited pool of qualified representatives within Hawaii, and notes that this provision, in its current form, may negatively impact participation from potential bidders. To avoid unnecessarily constraining the number of bidders able to develop bids, the commission directs the Companies to work with the IOs to revise this provision to ensure adequate protections exist against the improper disclosure of confidential and/or proprietary information across bidders, without stifling bidders' ability to choose their own representation.

²⁹The commission interprets "unaffiliated" here to refer to bidders that do not have with a relationship to each other, rather than as a descriptor of any relationship those entities have to the Companies.

F.

Additional Guidance

1.

Neighbor Islands

The commission appreciates the Companies' response to the commission's request regarding more information on the Companies' renewable energy plans for both Lanai and Molokai.³⁰ The commission supports the Companies' commitment to filing their Draft RFPs related to Lanai and Molokai by August 2019, set forth in the Companies' Comments. For the sake of efficiency, the commission emphasizes the desire to avoid the need for the Companies to modify the energy targets for Lanai and Molokai after the submission of the RFPs, as was the case for Oahu, Maui and Hawaii Island in the Phase 2 Draft Renewable RFP. The commission thus directs the Companies to establish procurement targets that are commensurate with the needs of those systems at the outset.

2.

State Tax Credits

Sections 1.2.19 and 1.2.20 in the Companies' Draft Renewable RFP states that developers shall pursue all available applicable federal and state tax credits, and that proposal pricing

³⁰See Order No. 36187 at 13-14.

must be set to incorporate the benefit of such available tax credit.³¹ Further, "each proposal submitted in response to [the] RFP must represent a Project is capable of meeting the requirements of [the] RFP without having to rely on a proposed change in law, rule or regulation."³²

HCPA states that "it is unreasonable to force proposers to take on 100% of the risk of State Tax policy change between now and 2024."³³ HCPA further notes that while this requirement is similar to one that was included in the Phase 1 RFP, "the GCOD being proposed in the Phase 2 RFP has been extended to 2022 and 2024" and "[g]iven the five year time span between now and 2024 and the likelihood of the legislature amending the state tax credit between now and then, it is unreasonable to have the Proposers take on 100% of the risk of tax policy change."³⁴

The commission recognizes the concern of bidders while also finding it to be highly desirable that bidders maximize the value of all available tax incentives that can be passed through to customers. The commission is concerned that bidders may add contingencies to their proposed pricing to accommodate this risk,

³¹Companies' Phase 2 Draft RFP Filing, Exhibit 8 at 10.

³²Companies' Phase 2 Draft RFP Filing, Exhibit 8 at 10.

³³HCPA Comments at 3.

³⁴HCPA Comments at 3.

which could eliminate the fundamental benefit of the underlying tax credit. Accordingly, the commission directs the Companies work with the IOs to remove this risk while allowing for a transparent, actual, and verifiable adjustment mechanism, should the state tax law change.

3.

Pro-Forma Submittal Requirement

Section 3.10.3 of the Companies' Phase 2 Draft RFP states "each Proposer must also agree to provide Project financial information, including a proposed Project finance structure and Pro Forma Cashflow in the form specified in Appendix B, attached to [the] RFP."³⁵ The Companies state that "such information will be used to evaluate Threshold Requirements and non-price criteria."³⁶

HCPA states that the Companies are "asking for highly competitive proprietary information" by proposing to require bidders to submit the Pro-Forma Cashflow as a required component of the bid. HCPA further submits that in the event the Companies are allowed to participate in the procurement process, providing such confidential information to the Companies would be akin to handing over confidential information to a potential

³⁵Companies' Phase 2 Draft RFP Filing, Exhibit 8 at 26.

³⁶Companies' Phase 2 Draft RFP Filing, Exhibit 8 at 26.

competitor, and as such, it should not be a bid requirement in the Phase 2 RFPs.

The commission agrees with this position and directs the Companies to remove this as a requirement of the Phase 2 RFPs. To the extent the commission or the Consumer Advocate require the underlying cost assumptions of a particular project, the commission or the Consumer Advocate may request this information during review of the subsequent PPA.

4.

Bid Transparency

Following the conclusion of the Phase 1 RFPs, the commission finds that it is desirable to make public as much information regarding the bids received and awarded as possible, to improve the overall transparency of the RFP process. However, the commission is aware that certain disclosures have the potential to affect competition in future procurements. Accordingly, the commission directs the Companies to work with the IOs to increase bid transparency within the RFP process, while maintaining an appropriate level of confidentiality regarding bids and bidders.

IV.


ORDER

THE COMMISSION ORDERS:

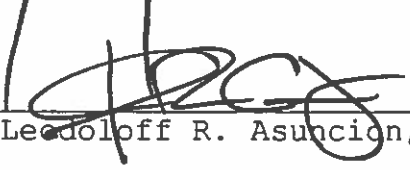
The commission directs the Companies to file their Draft Final Phase 2 Renewable and Grid Services RFPs by July 10, 2019, consistent with the guidance set forth in this Order.

DONE at Honolulu, Hawaii JUN 10 2019.

PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
James P. Griffin, Chair

By 
Jennifer M. Potter, Commissioner

By 
Leodoloff R. Asuncion, Jr., Commissioner

APPROVED AS TO FORM:


Caroline C. Ishida
Commission Counsel

2017-0352.lm

CERTIFICATE OF SERVICE

The foregoing order was served on the date of filing by mail, postage prepaid, and properly addressed to the following parties:

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