

BELIZE:

PUBLIC UTILITIES COMMISSION (REQUEST FOR PROPOSALS) REGULATION,
2022

S.I. NO. ### OF 2022

ARRANGEMENT OF REGULATIONS

PART I

INTERPRETATION AND APPLICATION

1. Short title
2. Interpretation
3. Application and Scope

PART II

TENDERING PLANNING

4. Principles of Procurement
5. Procurement flowing out of a Planning Determination
6. Efforts to lower barriers
7. Call for Competition triggered

PART III

RFP PROCESS

8. Standard Bid Documents and Codification
9. Tendering Methods and Features

10. Bid Evaluation Committee
11. Fairness and transparency
12. Terms of Reference
13. Bid Evaluation Report
14. Decision-making of the Commission
15. Past Performance
16. Protest of outcome
17. Force Majeure

PART IV

MISCELLANEOUS

18. Offences
19. Breach of codes to be offence
20. Timeline for issuance of codes
21. Promulgation of codes
22. Review of codes

BELIZE:

STATUTORY INSTRUMENT

No. #### of 2022

REGULATIONS made by the Public Utilities Commission pursuant to the powers conferred upon it by Section 55 of the Public Utilities Commission Act, Chapter 223 of the Laws of The Single Revised Edition 2011, and all other powers thereunto it enabling and with the approval of the Minister and a negative resolution of the House of Representatives.

(Gazetted 2022)

PART I – INTERPRETATION AND APPLICATION

Short title

1. (1) These Regulations may be cited as the **PUBLIC UTILITIES COMMISSION (REQUEST FOR PROPOSALS) REGULATION, 2022.**
(2) These Regulations shall come into force upon being tabled, without objection, in the House of Representatives.
2. As used in these regulations:

Interpretation

"Affiliated person" means any person that directly or indirectly controls or is controlled by or is under the control or influence of another person, and shall include any partner, shareholder, warrant holder, member, director, officer, or manager of any such person. For the purposes of this definition, the term "control" means the possession, directly or indirectly, of the power to direct or to cause the act, omission or conduct of the management or the policies of such person.

"Candidate" means an economic operator which has been either been invited to participate in a procurement process, has applied for prequalification or has otherwise expressed an interest in a procurement process, but before he has made a bid.

"Commission" or "PUC" means Public Utilities Commission as defined in the Public Utilities Commission Act.

"Bid" means an offer made by an economic operator to a licensee for supply of goods, works or services for consideration which is capable of being accepted to form a contract.

"Bidder" means an economic operator which has made a bid in a procurement process conducted by a licensee.

"Bidding documents" means requirements in respect of submission of bids, all relevant specifications, draft contractual documents to be entered into with the winning bidder, information on bid security and other documents issued by the Single Buyer and which are binding on bidders.

"Commission" means Public Utilities Commission as defined in the Public Utilities Commission Act

"Economic Operator" means any person or an entity, or a group of such persons or entities or both, including any temporary associations of undertakings, which offers the execution of works or of a work, the supply of goods or the provision of services on the market.

"Full Tariff Review Proceeding" or "FTRP" means a proceeding held by the Commission to determine the regulated values, mean utility rates, tariffs, rates, charges and fees to be applied over the next full tariff period

"Independent Producer" means a licensee or a public utility provider that owns or operates facilities for the provision of utility services for use primarily by the public by way of the Single Buyer, and that is not the same legal entity as a Single Buyer

"LCEP" means Least Cost Expansion Plan, a plan which a Single Buyer files with the Commission to show how it intends to meet the anticipated future needs, capacity or otherwise, of its customers through a "least-cost, least-risk" combination of supply-side and demand-side resources.

"Long-term" means a contractual term exceeding 12-months in duration

"Market Dominance" means, as determined by the Commission, the control of virtually all market share for purchase or sale of any regulated service by a Utility and "Market Dominant" shall be construed accordingly

"Open Procedure" means a competitive procurement method whereby the number of potential participants in the procurement is not restricted.

"Planning Determination" is a decision resulting from a hearing conducted by the Commission pursuant to the Planning Regulations, wherein the Single Buyer has filed its least cost expansion plan (LCEP) for the Commission's review and approval.

"Procurement" means, in relation to any regulated service, the solicitation for or the acquisition of the supply of goods, works and services or any combination thereof.

"Procurement Notice" means a notice of invitation to participate in prequalification or to bid.

"Restricted Procedure" means a competitive procurement method whereby only the economic operators preselected by the Single Buyer are invited to participate in the procurement process;

"RFP" or "Request For Proposals" means the regulatory process, after a Planning Determination, of inviting economic operators to submit a tender to satisfy demand for regulated utility services;

"Short-term" means a contractual term not exceeding 12-months in duration

"Single Buyer" means any licensee that operates in a monopsony for the provision of utility services, on a commercial basis, to premises within the country of Belize; and

"Utility" means a licence holder, or licensee as defined by the Electricity Act or the Water Industry Act; or a public utility provider as defined by the Public Utilities Commission Act.

"Utility Purchase Agreement" means a long-term agreement between a Single Buyer and an Independent Producer for the provision of utility services as defined in subsection 3(4).

3. (1) These Regulations shall govern the wholesale procurement processes conducted by a Single Buyer for procurement of any of the Regulated Services; in particular, their obligation to facilitate competition in the relevant Regulated Services.
- (2) These Regulations seek to implement the policies and strategies of the Government in relation to the RFP processes of Utilities and the Commission. Whereby LCEPs or such other Resource Plans that are submitted to the Commission shall be in accordance with the national policies or such other directives of the Government as specified from time to time in relation to Regulated Services. Such policies or directives shall not be interpreted as intended to impair the duty of the PUC to promote competition.
- (3) These Regulations establish rules of procedures for the Commission to make a call for competition with respect to contracts for long-term awards in respect of regulated services, by virtue of its mandate to secure that all reasonable demands for utility services are satisfied.
- (4) These Regulations shall prescribe the procedures in procurement by a Single Buyer for
 - (a) electric capacity, energy or ancillary services pursuant to a power purchase agreement or any other contractual arrangement (such as a generation lease or

Application and
Scope

similar arrangement) with the contractor having the same business purpose or function for the Single Buyer;

- (b) water supply services pursuant to a bulk water supply agreement or any other contractual arrangement (such as a water production lease or similar arrangement) with the contractor having the same business purpose or function for the Single Buyer,
- (c) sewage treatment and disposal services pursuant to a wastewater treatment service agreement or any other contractual arrangement (such as a wastewater treatment lease or similar arrangement) with the contractor having the same business purpose or function for the Single Buyer.
- (d) any other regulated services that the Commission may by Order designate as having a Market Dominant Provider.

PART II – TENDER PLANNING

- 4. (1) The Commission shall ensure an adequate degree of transparency in the entire procurement cycle in order to secure the fair and equitable treatment for economic operators. To this end the Commission shall safeguard that
 - a) key decisions on procurement are well-documented, transparent and easily accessible, so that RFP specifications or award decisions can be independently verified as being based on fair grounds;
 - b) there is information symmetry from the Single Buyer to candidates at all times;
 - c) confidential information is protected, such as trade secrets of bidders, to ensure a level playing field., and
 - d) there is full and fair disclosure to all candidates of the participation of affiliated persons of the Single Buyer or bidders participating in the procurement process.
- (2) The Commission shall maximise transparency in competitive tendering and take precautionary measures to enhance integrity, such as
 - a) validating the needs assessment, definition of requirements and choice of procedures;
 - b) providing clear rules, and possibly guidance, on the choice of the procurement method;
 - c) setting relevant and objective criteria for evaluating bids.
- (3) The Commission shall take all reasonable steps to ensure that its representative participating in the procurement process meets high professional standards of knowledge, skills and integrity.
- (4) The Commission shall put mechanisms in place to mitigate risks to the integrity of the procurement process. Specific mechanisms for monitoring the procurement process and detection of misconduct may include:

- a) periodic reporting to the Commission by the Single Buyer;
- b) utilizing an independent person to verify that rules were followed;
- c) the establishment of procedures for reporting misconduct;
- d) facilitating the reporting of related complaints;

5. (1) The Commission shall only approve LCEPs and make Planning Determinations that are in accordance with national energy policies of the Government as may be specified from time to time in relation to Regulated Services.

(2) Where a Planning Determination indicates a requirement for contracting additional capacity, the Single Buyer shall conduct the RFP process as set forth in these Regulations.

(3) The said RFP process may specify conditions in terms of a maximum amount of capacity to be procured, location, price ceilings, timing or other relevant matters.

(4) Where the Commission determines that the possibility exists for conflict of interest between the interested parties in an RFP it shall conduct, to the exclusion of the Single Buyer, the RFP Process and associated contract award. That is, where there is a conflict of interest as determined by the Commission, the Commission shall cause an Independent person to lead and direct the RFP Process and contract award, not the Single Buyer. In such a case, the RFP process as set forth in these Regulations shall apply to the Independent Person appointed by the Public Utilities Commission in the same manner as if it was the Single Buyer SAVE that at no time shall the Commission be deemed an Affiliated Person or would a conflict of interest be deemed to arise in connection with the Commission being deemed the Single Buyer for any purposes hereunder.

(5) Provided that the exclusion of the Single Buyer from the procurement process does not remove the obligation of the Single Buyer from supporting the Evaluation Committee through the provision of pertinent technical and market information.

“Conflict of interest” means if the Single Buyer or its Affiliated person is making any offers under the RFP Process or if any of the major shareholders of the Single Buyer or their Affiliated person is making any offers under the RFP Process.

6. (1) The Commission shall, during a Planning Determination, set and publish target dates in respect of Calls for Competition.

(2) The Commission may by Order vary the target dates previously set for Calls for Competition.

(3) The Commission shall give fair notice of procurement needs and dates so as to facilitate preparation and participation by economic operators.

(4) Prior to the conduct of an RFP and to mitigate the early-stage project development risks to be borne by all bidders, the Commission shall utilize regulatory tools at its disposal. Early-stage activities may include:

Procurement
flows out of a
Planning
Determination

Efforts to
lower
barriers

- a) site selection or land acquisition;
- b) soil bearing capacity and other geotechnical investigations;
- c) investment-grade resource measurements and assessments;
- d) pre-feasibility studies;
- e) securing grid access or interconnection

(5) Furthermore, the Commission may collaborate with the Government of Belize, International agencies, Private sector entities and Researchers to undertake early-stage activities

(6) Where the reasonable expenses incurred for early-stage project development activities described in subsection 6(4) above are being financing by the Single Buyer, the rate-setting procedures shall allow for full cost recovery at the next rate review.

(7) Nothing in these regulations shall be construed to operate so as to pre-empt or require the Minister to make changes to support schemes funded by ratepayers described in subsection 6(4) above; for the purpose of mitigating the perceived risk exposure for any particular class of supply technology.

7. (1) The Planning Determination shall identify, where necessary, the need for new capacity to be deployed and may also include:
- a) identification of variation between projected demand and available supply
 - b) a recommended Expansion Plan defining supply options and related commissioning timelines
 - c) an indicative Procurement Plan.
- (2) In line with the Planning Determination, the Commission shall
- a) prepare all relevant procurement documentation, worksheets, etc.;
 - b) request the Government of Belize and the Single Buyer appoint members to the Bid Evaluation Committee (BEC).
- (3) The Commission shall lead a RFP Dialogue with the Single Buyer and the members of the BEC.
- (4) At the conclusion of the RFP Dialogue, the PUC shall finalize the RFP documentation and hand off to the Single Buyer
- (5) The Single Buyer shall only use Commission-approved procurement documentation for conduct of the RFP Process.

Calls for
Competition

PART III – RFP PROCESS

Planning
Determination

8. (1) Every Single Buyer shall develop and file with the Commission a least cost expansion plan (LCEP) of such other Resource Plans as prescribed in relevant subsidiary legislation in respect of utility planning.
- (2) Pursuant to such Planning Regulations, the Commission shall make a Planning Determination when it is satisfied that the LCEP or Resource Plans provides sufficient scope and depth to make sound long-term decisions.
- (3) In the absence of Planning Regulations, the First Schedule of these Regulations shall apply.
- (4) If the Commission determines, there will likely be insufficient supply or network capacity existing, under construction or planned to meet the projected demand for utility services at any time in the future, the Commission shall cause to be prepared a Procurement Plan having the scope and timing to meet the projected shortfalls.

Single Buyer to
Conduct RFP

9. (1) Except where subsection 5(4) applies, the Single Buyer shall conduct the RFP Process in accordance with the rules, processes, procedures and codes promulgated by the Commission, in accordance with Part II herein.
- (2) Where a Single Buyer does not conform to subsection (1) herein, it commits an offence.

Single Buyer
agree on
timeline

10. (1) Subsequent to a Call for Competition, the Single Buyer shall agree and follow a timeline for conduct of the RFP Process.
- (2) Where the Commission determines that the Single Buyer has, without reasonable justification, not followed the timeline in subsection (1) above, it shall conduct the RFP Process to the exclusion of the Single Buyer.

Standard
Bid
Documents
and
Codification

11. (1) The Commission shall, in consultation with Interested Parties, develop and disseminate standard bidding document ("SDB") templates in a Code. The RFP process shall be initiated in a timely manner, to be specified by the Code, to meet the identified generation needs once it has approved the LCEP or such other Resource Plan.
- (2) The Code shall prescribe the bidding procedures and risk assignment. The open competitive procedure shall have seven main phases:
- a) advertisement and notification,
 - b) preparing and issuing the Bidding Document,
 - c) bid preparation and submission,
 - d) bid opening,
 - e) bid evaluation and selection,
- (3) The Code shall set the rules for competitive procedures including but not limited to:

- a) sealed bidding,
 - b) rules for negotiation (other than by sealed bidding) based on techniques such as best value continuum, trade-off processes and lowest price technically acceptable;
 - c) two-step sealed bidding
 - d) Restricted procedure or Negotiated process,
 - e) Interaction process or Dialogue process.
- (4) The methods defined in subsection 11(3) d) and e) are not intended to be a complete procurement processes; but rather will ultimately culminate in candidates submitting sealed bids to complete the procurement process

12. (1) The preferred tendering method shall be open competitive modality. However, selective or restrictive tendering procedures may, subject to the approval of the Commission, be entertained.

- (2) In selective and restricted procedures, the Commission shall establish objective rules and criteria that enable the Single Buyer to reduce the number of candidates that will be invited to make a bid or to negotiate. If justified, the Commission shall nonetheless take account of the need to ensure adequate competition when selecting the number of candidates or bidders;
- (3) The Commission shall weigh other features of the tender design such as setting ceiling norms for achieving a manageable number of candidates.
- (4) The Commission shall design features of the tender to meet the goals of the call for completion within the socio-economic development context and utility system characteristics, while seeking to maximize welfare gains.

13. (1) The RFP process shall be administered by the Single Buyer. That is, the Single Buyer is responsible for the carrying out of the tendering process upon a Call for Competition being triggered by the Commission.

- (2) The Single Buyer may engage technical expertise to assist it in any aspect of the tendering process.
- (3) The Bid Evaluation Committee (“Evaluation Committee” or “BEC”) shall be comprised of 5 members: two to be appointed by the Ministry, one from the Ministry of Finance and two from the Single Buyer. The BEC shall be responsible for evaluating the bids; and shall, subject to the rules of procedures set out in the Code, decide how to conduct its work by way of majority voting.
- (4) The BEC may call on technical expertise made available by the Single Buyer for carrying out the detailed evaluation of each bid, ranking the bids, identifying a preferred bidder, and preparing the Bid Evaluation Report.

Tendering
Methods
and Features

Roles and
Responsibilities
in Tendering
Process

- (5) The members of the BEC shall maintain strict confidentiality in the conduct of the RFP Process.
- (6) The Single Buyer shall, as the Commission may direct, regularly update the Commission on the progress of the RFP process.

14. (1) The RFP process shall avoid unfair advantage by taking such means as are necessary including but not limited to ensuring equal access to:

- (a) any proprietary information that may influence the Evaluation Committee,
- (b) source selection information that is relevant to the eventual contract but may not be available to all tenderers.

(2) the RFP Process shall adopt all reasonable measures to prevent collusion or “bid-rigging”.

15. (1) The Terms of Reference shall prescribe what utility services are being procured and set out the evaluation criteria and scoring methodology that will be used by the Evaluation Committee to evaluate the bids.

(1) The Single Buyer may propose a Terms of Reference to the Commission.

(2) In such as case, the Terms of Reference shall be reviewed and approved by the Commission during a RFP Dialogue.

16. (1) The Evaluation Committee shall submit the completed Bid Evaluation Report to the Commission and the Commission shall verify if the RFP Process was been carried out in a satisfactory manner and that the scoring and ranking of the bidders was done in compliance with the methodology and criteria set by the Commission in the RFP documentation.

(2) The Commission may direct the Evaluation Committee to revisit the evaluation of the bids if any issues arise in the Commission approval process that require such a revisitation.

17. (1) The Commission shall verify that the RFP Process was carried out in accordance with its rules, processes, procedures and codes herein and that the scoring and ranking of the bidders was done in compliance with the methodology and criteria approved by the Commission and set out in the TOR.

(2) The Commission may direct the Evaluation Committee to revisit the evaluation of the bids if any issues arise in the Commission’s review and approval process that require such a revisitation.

Fairness and transparency

Terms of Reference

Bid Evaluation Report

Decision-making of the Commission

- (3) The Decision of the Commission shall reference preliminary findings on market forces that triggered the RFP Process and also the findings that validated the successful tender.
- (4) Where the Commission verifies that the RFP has been carried out to its satisfaction it shall indicate that the Single Buyer and the successful Bidder are to commence negotiations of a Power Purchase Agreement.
- (5) Power Purchase Agreement negotiations shall be in accordance with procedures prescribed in relevant Regulations.
- (6) Where the Commission or the Evaluation Committee has made a material mistake, the Commission may cancel an RFP.

Past
Performance

18. In selecting the successful bid, the Commission may take into account the past performance of the Bidder if it was previously successful in a bid.

Protests

19. (1) Any person which participated in an RFP process may protest the resulting decision or order of the Commission.
- (2) For a protest herein to be valid it shall follow the concordant process protests or objections to commission decisions as may be detailed in any relevant regulation.
- (3) a valid protest shall specify the nature of the protest, if it takes issue with the solicitation itself, the anticipated or actual decision or order, or speaks to economic interest or undisclosed material fact.
- (4) A valid protest shall be under oath.
- (5) Nothing in this section shall operate to oblige the Commission to re-consider any final decision or order.

Material
mistakes and
Force majeure

20. (1) Where the Commission makes a determination that force majeure has affected relevant market forces, the Commission may cancel an RFP.
- (2) Where the Commission or the Evaluation Committee has made a material mistake, the Commission may cancel an RFP.
- (3) Where the Commission cancels an RFP process for reason other than force majeure, it shall compensate for costs wasted in preparing documentation in furtherance of a tender, all tenderers whose bid had been accepted by the Commission for advanced consideration.
- (4) In such a case, the quantum of reimbursable costs is at the sole discretion of the Commission.

PART IV: MISCELLANEOUS

- Offences
21. A utility that contravenes any provision of these regulations shall be guilty of an offence subject to the remedies in sections 42 and 46 of the PUC Act.
22. A breach of any of the Codes herein shall constitute be an offence under these regulations and section 18 shall apply.
23. Where the Single Buyer commits an offences under these Regulations the Commission may elect to conduct the RFP Process to the exclusion of the Single Buyer.
- Timeline for codes
24. The Commission shall prepare and promulgate each of the Codes herein within 60 days of the appointed day, for the general direction of utilities in respect of the matters within the scope of each of the Codes.
25. The Commission shall cause the Codes, and every revised edition thereof, to be gazetted and published on its website or in any other manner that it considers appropriate.
- Review of codes
26. The Commission shall review the Codes no less than once in every four-year period, and in conducting that review shall consult stakeholders in such manner as the Commission considers appropriate.

MADE by the Public Utilities Commission this _____ day of _____, 2022.

(MR. DEAN MOLINA)
Chairman
Public Utilities Commission

APPROVED by the Minister of Public Utilities this _____ day of _____, 2022.

(MR. MICHEL CHEBAT)
Minister of Public Utilities & Logistics

DRAFT

FIRST SCHEDULE

1. (1) No less than 120 days before the commencement of an FTRP, the Single Buyer shall file with the Commission its LCEP as described in this section.
 - (2) Not less than 45 days after the Single Buyer has filed its LCEP, the Commission shall convene a public hearing on the adequacy of the LCEP.
 - (3) At the hearing any interested person may make comments to the Commission regarding the contents and adequacy of the LCEP.
 - (4) The hearing shall conclude with the Commission making a Planning Determination which shall speak to whether:
 - (a) The Single Buyer's forecast requirements are based on substantially accurate data and an adequate method of forecasting;
 - (b) The LCEP identifies and takes into account any present and projected energy resources that may be exploited as a consequence of technological advancement in the industrial, commercial, residential, and energy-producing market segments;
 - (c) The LCEP adequately demonstrates the economic, environmental, and other benefits to the country and to customers of the utility, associated with the following possible sources of supply:
 - (i) Facilities that operate on the principle of cogeneration;
 - (ii) Facilities which operate on alternative forms of energy and are dispatchable;
 - (iii) Facilities which operate on alternative forms of energy having variable characteristics;
 - (iv) Facilities which operate on conventional forms of energy;
 - (v) Purchases of power from neighbouring states;
 - (vi) Energy storage facilities; and
 - (vii) Other generation facilities and demand-side options including repowering of existing power plants
 - (d) The LCEP has adequate flexibility in allowing for uncertainty and adjustments in response to changing circumstances going forward.
 - (5) The Commission may direct the Single Buyer to file any additional forecasts, demand-side resource options, supply-side resource options and model relevant supply mix scenarios as may be necessary to aid in making the Planning Determination.

Planning
Determination

- (6) The Commission shall make the Planning Determination when it is satisfied that the amended LCEP provides sufficient scope and depth to make a sound planning decision.
- (7) Where no less than 90 days have passed since the initial filing of the LCEP and subsequent filings remain, in the opinion of the Commission, to be unsatisfactory, the Commission shall issue its Planning Determination in accordance with the policy directives of Government or the Minister and, insofar as is possible, the latest LCEP filed by the Single Buyer.

DRAFT