



June 1, 2024

Summary: S.I 83 of New Request for Proposal (RFP) Regulations, 2024

Aligned with our Mission to create sustainable and competitive markets in the utility and ICT sectors, the Public Utilities Commission (PUC) hereby notifies the public of a new 'Request for Proposals' (RFP) Regulations, 2024 that outlines clear guidelines to foster transparency, enhance open competition, and build investor confidence to participate in the utility sectors procurement process.

Statutory Instrument (S.I.) No. 83 of 2024 was gazetted on June 1, 2024 and applies to the 'wholesale' procurement process conducted by a single buyer (utility service providers) for the procurement of any regulated utility services. Regulated utility services include the provision of electric capacity, energy or ancillary services; water supply, sewage treatment and disposal service; and other services that the Commission may designate as having a market dominant provider.

Key objective of S.I. 83 of 2024:

- i. Provides for the process to implement the outputs of the national development plan;
- ii. establishes a RFP regulatory framework that is transparent and fosters healthy competition;
- iii. mandates competitive bidding that ensures consumers get the best price for any investment made by their regulated utility service providers;
- iv. identifies clear roles and responsibilities of participants in the tendering process;
- v. establishes standard bidding documents and codifications; and
- vi. defines decision making process of the Evaluation Committee and the Commission.

More details on **S.I. 83 of 2024 Request for Proposals (RFP) Regulations** can be found below:

BELIZE:

PUBLIC UTILITIES COMMISSION (REQUEST FOR PROPOSALS) REGULATIONS, 2024

ARRANGEMENT OF REGULATIONS

PART I

Preliminary

1. Citation.
2. Interpretation.
3. Application.

PART II

Tendering Planning

4. Interpretation of term used in Part II.
5. Principles of procurement.
6. Procurement flowing out a planning determination.
7. Calls for competition.
8. Planning determination.

PART III

Request for Proposal Process

9. Requirement for LCEP.
10. Single buyer to conduct RFP process.
11. Single buyer to agree on timeline.
12. Standard bidding documents and codification.
13. Tendering methods and features.

14. Roles and responsibilities in tendering process.
15. Fairness and transparency of RFP process.
16. Terms of reference.
17. Bid evaluation report.
18. Decision making of the Commission.
19. Past performance.

PART IV

Miscellaneous

20. General offence and penalty.
21. Timelines for issuance of code.
22. Review of code.
23. Protest.
24. Force majeure and material mistakes.
25. Negative resolution.

SCHEDULE

BELIZE:

STATUTORY INSTRUMENT

No. 83 of 2024

REGULATIONS made by the Public Utilities Commission with the approval of the Minister in exercise of the powers conferred upon it by section 55 of the Public Utilities Commission Act, Chapter 223 of the Substantive Laws of Belize, Revised Edition 2020, and all other powers thereunto it enabling.

(Gazetted 1st June, 2024).

1. These Regulations may be cited as the

Citation.

PUBLIC UTILITIES COMMISSION (REQUEST FOR PROPOSALS), 2024.

2. 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;

“candidate” means an economic operator who has–

- (a) been invited to participate in a procurement process;
- (b) applied for prequalification; or
- (c) otherwise expressed an interest in a procurement process, but before he has made a bid;

“Commission” means Public Utilities Commission established under section 3 of the Act;

“control”, in relation to an affiliated person, 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;

“bid” means an offer made by an economic operator to a licensee for the supply of goods, works or services for consideration, which is capable of being accepted to form a contract;

“bidder” means an economic operator who has made a bid in a procurement process conducted by a licensee;

“bidding documents” means the documents required for the submission of bids, including all relevant specifications, draft contractual documents to be entered into with the winning bidder, information on bid security and any other document issued by a single buyer, which are binding on all bidders;

“economic operator” means any person, entity, group of such persons or entities, or both, including any temporary association of undertakings which offers the execution of works, 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 a single buyer, and that is not the same legal entity as a single buyer;

“LCEP” means Least Cost Expansion Plan, which is a plan that 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 and least-risk combination of supply-side and demand-side resources;

“long-term” means a contractual term exceeding twelve months;

“market dominance” means, as determined by the Commission, the control of virtually all market share for the purchase or sale of any regulated service by a utility and “market dominant” shall be construed accordingly;

“Minister” means Minister responsible for public utilities;

“open procedure” means a competitive procurement method whereby the number of potential participants in the procurement is not restricted;

“planning determination” means a decision resulting from a hearing conducted by the Commission in which a single buyer has filed its LCEP for the review and approval of the Commission;

“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;

“regulated services” means any–

- (a) electric capacity, energy or ancillary services pursuant to a power purchase agreement or any other contractual arrangement, such as a generation lease or similar arrangement, with

the contractor having the same business purpose or function 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; and
- (d) other services that the Commission may, by order published in the *Gazette*, designate as having a market dominant provider;

“restricted procedure” means a competitive procurement method whereby only the economic operators preselected by a single buyer are invited to participate in the procurement process;

“Request For Proposals” or “RFP” means the regulatory process, after a planning determination, of inviting economic operators to submit a tender to satisfy the demand for regulated services;

“short-term” means a contractual term not exceeding twelve months;

“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;

“utility” means a–

- (a) licence holder as defined under the Electricity Act; CAP. 221.
- (b) licensee as defined under the Water Industry Act; or CAP. 222.
- (c) public utility provider as defined under the Act; and

“utility purchase agreement” means a long-term agreement between a single buyer and an independent producer for the provision of regulated services.

3. These Regulations shall apply to the wholesale procurement processes conducted by a single buyer for the procurement of any regulated service.

Application.

PART II

Tender Planning

4. In this Part, unless the context otherwise requires–

Interpretation
of term used in
Part II.

“conflict of interest” means a situation in which a single buyer or its affiliated person makes an offer under the RFP process, or in which any shareholder who can influence or affect the decisions of a single buyer or their affiliated person makes an offer under the RFP process.

5.–(1) To safeguard the fair and equitable treatment of economic operators, the Commission shall ensure an adequate degree of transparency in the entire procurement process by ensuring that–

Principles of
procurement.

- (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 on a fair basis;

- (b) there is information symmetry from a single buyer to candidates at all times;
- (c) confidential information, including trade secrets of bidders, is protected to ensure a level playing field; and
- (d) there is full and fair disclosure to all candidates of the participation of affiliated persons of a 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, including but not limited to–

- (a) validating the needs assessment, definition of requirements and choice of procedures;
- (b) providing clear rules and guidance on the choice of procurement method; and
- (c) setting relevant and objective criteria for evaluating bids.

(3) To mitigate risks to the integrity of the procurement process, the Commission shall set mechanisms in place for monitoring the procurement process and for detecting misconduct, including but not limited to–

- (a) periodic reporting to the Commission by a single buyer;
- (b) utilising an independent person to verify that the rules were followed;

- (c) establishing procedures for reporting misconduct;
and
- (d) facilitating the reporting of related complaints.

6.-(1) The Commission shall only approve a LCEP and make a planning determination that is in accordance with the national energy policies of the Government in respect to regulated services as may be specified from time to time.

**Procurement
flowing out
of a planning
determination.**

(2) Where a planning determination indicates a requirement for contracting additional capacity, a single buyer shall conduct the RFP process in accordance with these Regulations.

(3) The RFP process may specify conditions, including the maximum amount of capacity to be procured, location, price ceilings, timing and any other relevant matter.

(4) Where the Commission determines that there is a possibility for a conflict of interest between the interested parties in a RFP process, the Commission shall appoint an independent person to conduct the RFP process and contract award.

(5) Where an independent person conducts the RFP process and contract award under sub-regulation (4), the RFP process shall apply to the independent person appointed by the Commission in the same manner as if the independent person was the single buyer.

(6) Where the Commission is deemed a single buyer for any purpose under these Regulations, the Commission shall not be deemed an affiliated person and a conflict of interest shall not be deemed to arise.

(7) Notwithstanding sub-regulation (6), the exclusion of the single buyer from the RFP process shall not remove the

obligation of the single buyer to support the Bid Evaluation Committee through the provision of pertinent technical and market information.

Calls for
competition.

7.–(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 published in the *Gazette*, vary the target dates set for calls for competition.

(3) The Commission shall give fair notice of procurement needs and dates to facilitate the preparation and participation of an economic operator.

(4) Prior to the conduct of the RFP process and to mitigate the early stage project development risks to be borne by all bidders, the Commission shall utilise the regulatory tools at its disposal.

(5) The Commission may collaborate with the Government, international agencies, private sector entities and researchers to undertake early stage project development activities, including but not limited to–

- (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; and
- (e) securing grid access or interconnection.

(6) Where the reasonable expenses incurred for early stage project development activities under sub-regulation

(5) are being financed by a 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 pre-empt or require the Minister to make changes to support schemes funded by ratepayers under sub-regulation (5) to mitigate the perceived risk of exposure for any particular class of supply technology.

8.-(1) The planning determination shall identify, where necessary, the need for new capacity to be deployed and may include—

**Planning
determination.**

- (a) an identification of variation between projected demand and available supply;
- (b) a recommended expansion plan defining the supply options and related commissioning timelines; and
- (c) an indicative procurement plan.

(2) In accordance with the planning determination, the Commission shall—

- (a) prepare all relevant procurement documentation, worksheets and any other information; and
- (b) request the Government and a single buyer to appoint members to the Bid Evaluation Committee.

(3) The Commission shall lead a RFP dialogue with the single buyer and the members of the Bid Evaluation Committee.

(4) At the conclusion of the RFP dialogue, the Commission shall finalise the RFP documentation and submit it to the single buyer.

(5) The single buyer shall only use procurement documentation approved by the Commission for conduct of the RFP process.

PART III

RFP Process

Requirement for LCEP.

9.-(1) Every single buyer shall develop and file with the Commission a LCEP or any other resource plan required by the Commission under any other regulation made under the Act.

(2) Pursuant to regulations made for planning, the Commission shall make a planning determination when it is satisfied that the LCEP or any other resource plan provides sufficient scope and depth to make sound long-term decisions.

Schedule.

(3) In the absence of regulations made for planning determination under the Act, the Schedule of these Regulations shall apply.

(4) If the Commission determines that there will likely be insufficient supply or network capacity existing under construction or prepared to satisfy 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 process.

10. Except where regulations 6(4), (5) and (6) apply, a single buyer shall conduct the RFP process in accordance with the rules, processes, procedures and codes promulgated by the Commission and in accordance with Part II.

Single buyer to agree on timeline.

11.-(1) After a call for competition, a single buyer shall agree and follow a timeline for conduct of the RFP process.

(2) Where the Commission determines that the single buyer has not, without reasonable justification, followed

the timeline under sub-regulation (1), the Commission shall conduct the RFP process to the exclusion of the single buyer.

12.—(1) The Commission shall, in consultation with interested parties, develop and disseminate templates for standard bidding documents in a code.

Standard
bidding
documents and
codification.

(2) After the Commission has approved the LCEP or any other resource plan, the RFP process shall be initiated within the period specified in the code to meet the identified generation needs.

(3) The code shall prescribe the bidding procedures and risk assignment.

(4) The open competitive procedure shall comprise of the following five main phases—

- (a) advertisement and notification;
- (b) preparing and issuing the bidding document;
- (c) bid preparation and submission;
- (d) bid opening; and
- (e) bid evaluation and selection.

(5) The code shall prescribe the rules for competitive procedures including, but not limited to—

- (a) sealed bidding;
- (b) negotiation other than by sealed bidding based on techniques, including best value continuum, trade-off processes and lowest price technically acceptable;
- (c) two-step sealed bidding;
- (d) restricted procedure or negotiated process; and

(e) interaction process or dialogue process.

(6) The methods under sub-regulation (5)(d) and (e) shall not be complete procurement processes but shall culminate in candidates submitting sealed bids to complete the procurement process.

**Tendering
methods and
features.**

13.–(1) The preferred tendering method shall be open competitive modality.

(2) Notwithstanding sub-regulation (1), selective or restrictive tendering procedures may, subject to the approval of the Commission, be entertained.

(3) In approving selective and restricted tendering procedures, the Commission shall establish objective rules and criteria that enable a single buyer to reduce the number of candidates that will be invited to make a bid or to negotiate.

(4) The Commission shall, if it thinks fit, consider the need to ensure adequate competition when selecting the number of candidates or bidders.

(5) The Commission shall weigh other features of the tender design, including, but not limited to, setting ceiling norms for achieving a manageable number of candidates.

(6) 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 maximise welfare gains.

**Roles and
responsibilities
in tendering
process.**

14.–(1) When a call for competition is triggered by the Commission, the RFP process shall be administered by a single buyer.

(2) The single buyer may engage a technical expert to assist it in any aspect of the tendering process.

(3) The Bid Evaluation Committee 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 Bid Evaluation Committee shall be comprised of-

- (a) two members appointed by the Minister;
- (b) one member from the Ministry responsible for finance; and
- (c) two members from the single buyer.

(5) The Bid Evaluation Committee 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.

(6) The members of the Bid Evaluation Committee shall maintain strict confidentiality in the conduct of the RFP process.

(7) The single buyer shall, as the Commission may direct, regularly update the Commission on the progress of the RFP process.

15.-(1)The single buyer shall avoid any unfair advantage in the RFP process by taking any means necessary including, but not limited to, ensuring equal access to-

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

**Fairness and
transparency of
RFP process.**

(2) The single buyer shall adopt all reasonable measures to prevent collusion or bid-rigging in the RFP process.

Terms of
reference.

16.-(1) A single buyer may propose a Terms of Reference to the Commission.

(2) The Terms of Reference shall prescribe the regulatory services being procured, the evaluation criteria and scoring methodology that will be used by the Bid Evaluation Committee to evaluate the bids.

(3) Where the single buyer proposes a Terms of Reference under sub-regulation (1), the Terms of Reference shall be reviewed and approved by the Commission during a RFP dialogue.

Bid evaluation
report.

17. The Bid Evaluation Committee shall submit the completed bid evaluation report to the Commission and the Commission shall verify if the RFP process was 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.

Decision
making of the
Commission.

18.-(1) The Commission shall verify that the RFP process was carried out in accordance with its rules, processes, procedures and codes 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 Terms of Reference.

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

(3) The decision of the Commission shall reference preliminary findings on market forces that triggered the RFP process and the findings that validated the successful tender.

(4) Where the Commission verifies that the RFP process 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) A Utility Purchase Agreement negotiation shall be in accordance with procedures prescribed in relevant regulations.

(6) Where the Commission or the Bid Evaluation Committee has made a material mistake, the Commission may cancel a RFP.

19. 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.

Past performance.

PART IV

Miscellaneous

20.-(1) A utility that contravenes any provision of these Regulations commits an offence and the provisions of sections 42 to 46 of the Act shall apply as the case may be.

General offence and penalty.

(2) Where a single buyer commits an offence under these Regulations, the Commission may also elect to conduct the RFP process to the exclusion of the single buyer.

21.-(1) The Commission shall prepare and promulgate the code within 60 days of the appointed day for the general direction of utilities in respect of the matters within the scope of the code.

Timeline for code.

(2) The Commission shall cause the code, and every revised edition of the code, to be published in the Gazette and on its website or in any other manner that it considers appropriate.

Review of
code.

22. The Commission shall review the code no less than once every four years, and in conducting that review, the Commission shall consult with stakeholders in such manner as the Commission it thinks fit.

Protests.

23.-(1) Any person who participated in a 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 decisions of the Commission 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 speak 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 reconsider any final decision or order.

Force majeure
and material
mistake.

24.-(1) Where the Commission makes a determination that force majeure has affected relevant market forces, the Commission may cancel a RFP process.

(2) Where the Commission or the Bid Evaluation Committee has made a material mistake, the Commission may cancel the RFP process.

(3) Where the Commission cancels a RFP process for any reason other than force majeure, it shall compensate all tenderers whose bid had been accepted by the Commission for advanced consideration for costs wasted in preparing documentation in furtherance of a tender.

(4) Where the Commission compensates tenderers for costs wasted under sub-regulation (3), the quantum of

reimbursable costs shall be at the sole discretion of the Commission.

25. These Regulations are subject to negative resolution.

**Negative
resolution.**

SCHEDULE

*regulation [9(3)]**Planning Determination*

1. A single buyer shall file with the Commission its LCEP not less than 120 days before the commencement of an FTRP.
2. The Commission shall convene a public hearing on the adequacy of the LCEP not less than 45 days after the single buyer has filed its LCEP.
3. At the public hearing, any interested person may make comments to the Commission regarding the contents and adequacy of the LCEP.
4. The public hearing shall conclude with the Commission making a planning determination which shall address whether the—
 - (a) forecast requirements of the single buyer are based on substantially accurate data and an adequate method of forecasting;
 - (b) LCEP identifies and takes into account any present and projected resources that may be exploited as a consequence of technological advancement in the industrial, commercial, residential, and energy producing market segments;
 - (c) LCEP adequately demonstrates the economic, environmental, and other benefits to the country and to customers of the utility; and
 - (d) LCEP has adequate flexibility to allow 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.

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 policies and directives of Government and, to the extent as is possible, the latest LCEP filed by the single buyer.

MADE by the Public Utilities Commission with the approval of the Minister responsible for public utilities this 29th day of May, 2024.



MR. DEAN MOLINA
(Chairperson of the Public Utilities Commission)

APPROVED by the Minister responsible for public utilities this 29th day of May, 2024.



(HON. MICHEL CHEBAT)
Minister of Public Utilities, Energy, Logistics and E-Governance
(Minister responsible for public utilities)