

**54-17-502 Renewable energy source -- Solicitation -- Consultant.**

- (1) Sections 54-17-102 through 54-17-404 do not apply to a significant energy resource that is a renewable energy source as defined in Section 54-17-601 if the nameplate capacity of the renewable energy source does not exceed 300 megawatts or, if applicable, the quantity of capacity that is the subject of a contract for the purchase of electricity from a renewable energy source does not exceed 300 megawatts.
- (2)
  - (a)
    - (i) An affected electrical utility shall issue a public solicitation of bids for a renewable energy source up to 300 megawatts in size by January 31 of each year in which it reasonably anticipates that it will need to acquire or commence construction of a renewable energy resource.
    - (ii) A solicitation for a renewable energy source issued by January 31, 2008 for up to 99 megawatts satisfies the requirement of this Subsection (2) for the year 2008 if:
      - (A) not later than 30 days after the day on which this section takes effect, the affected electrical utility amends the solicitation or initiates a new solicitation to seek bids for renewable energy source projects up to 300 megawatts in size; and
      - (B) within 60 days after the day on which this section takes effect and as soon as practicable, the commission retains a consultant in accordance with Subsection (3).
  - (b) A consultant hired under Subsection (2)(a)(ii)(B) shall perform the consultant's duties under Subsection (3) in relation to the status of the solicitation process at the time the consultant is retained and may not unreasonably delay the solicitation process.
  - (c) For a solicitation issued after January 31, 2008:
    - (i) the affected electrical utility shall develop a reasonable process for pre-approval of bidders; and
    - (ii) in addition to publicly issuing the solicitation in Subsection (2)(a)(i), the affected electrical utility shall send copies of the solicitation to each potential bidder who is pre-approved.
  - (d) The affected electrical utility shall evaluate in good faith each bid that is received and negotiate in good faith with each bidder whose bid appears to be cost effective, as defined in Section 54-17-602.
  - (e) Beginning on August 1, 2008, and on each August 1 thereafter, the affected electrical utility shall file a notice with the commission indicating whether it reasonably anticipates that it will need to acquire or commence construction of a renewable energy resource during the following year.
- (3)
  - (a) If the commission receives a notice under Subsection (2)(e) that the affected electrical utility reasonably anticipates that it will need to acquire or commence construction of a renewable energy source during the following year, the commission shall promptly retain a consultant to:
    - (i) validate that the affected electrical utility is following the bidder pre-approval process developed pursuant to Subsection (2)(c) and make recommendations for changes to the pre-approval process for future solicitations;
    - (ii) monitor and document all material aspects of the bids, bid evaluations, and bid negotiations between the affected electrical utility and any bidders in the solicitation process;
    - (iii) maintain adequate documentation of each bid, including the solicitation, evaluation, and negotiation processes and the reason for the conclusion of negotiations, which documentation shall be transmitted to the commission at the conclusion of all negotiations in the solicitation; and

- (iv) be available to testify under oath before the commission in any relevant proceeding concerning all aspects of the public solicitation process.
- (b) The commission and the consultant shall use all reasonable efforts to not delay the solicitation process.
- (4) Documentation provided to the commission by the consultant shall be available to the affected electrical utility, any bidder, or other interested person under terms and conditions and at times determined appropriate by the commission.
- (5)
  - (a) The commission and the consultant shall execute a contract approved by the commission with terms and conditions approved by the commission.
  - (b) Unless otherwise provided by contract, an invoice for the consultant's services shall be sent to the Division of Public Utilities for review and approval.
  - (c) After approval under Subsection (5)(b), the invoice shall be forwarded to the affected electrical utility for payment to the consultant.
  - (d) The affected electrical utility may, in a general rate case or other appropriate commission proceeding, include, and the commission shall allow, recovery by the affected electrical utility of any amount paid by the affected electrical utility for the consultant.
- (6)
  - (a) Nothing in this section precludes an affected electrical utility from constructing or acquiring any renewable energy source project outside the solicitation process provided for in this section, including purchasing electricity from any renewable energy source project that chooses to self-certify as a qualifying facility under the federal Public Utility Regulatory Policies Act of 1978.
  - (b) An affected electrical utility that constructs a renewable energy source outside the solicitation process of this section or Section 54-17-201 shall file a notice with the commission at least 60 days before the date of commencement of construction, indicating the size and location of the renewable energy source.
  - (c) The date of commencement of construction under Subsection (6)(b) is the date of any directive from an affected electrical utility to the person responsible for the construction of the renewable energy source authorizing or directing the person to proceed with construction.
  - (d) For an affected electrical utility whose rates are regulated by the commission, the utility has the burden of proving in a rate case or other appropriate commission proceeding the prudence, reasonableness, and cost-effectiveness of construction under this Subsection (6), including the method used to evaluate the risks and value of any bid submitted in the solicitation under this section.
- (7) Nothing in this section requires an affected electrical utility to enter into any transaction that it reasonably believes is not cost effective or otherwise is not in the public interest.

Enacted by Chapter 374, 2008 General Session