

BELIZE:

PUBLIC UTILITIES COMMISSION (REQUEST FOR PROPOSALS) REGULATIONS, 2024

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BELIZE:

STATUTORY INSTRUMENT

NO. 137 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 19th October, 2024)

1. These Regulations may be cited as the

Citation.

PUBLIC UTILITIES COMMISSION (REQUEST FOR PROPOSALS), 2024.

2. In these Regulations–

Interpretation.

“Act” means the Public Utilities Commission Act;

“affiliated person”, in relation to any particular RFP process, means any person who directly or indirectly controls or is controlled by or is under the control or influence of the licensee undertaking the procurement, and shall include any partner, shareholder, warrant holder, member, director, officer, or manager of any such person;

“bid” means an offer made by an economic operator to a single buyer for the supply of goods, works or services in response to a published bidding document;

“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;

“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;

“Code” means the rules that may be issued by the Commission pursuant to these Regulations.

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

CAP. 223.

“control”–

- (a) 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;
- (b) in relation to a shareholder, warrant holder or member, means control over at least twenty-five percent of the votes attaching to the issued and outstanding share capital of the licensee undertaking the procurement; or

- (c) in relation to a company without share capital, means control over at least twenty-five percent of the total votes of members of that company;

“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;

“generation services” means any production and supply, in Belize, of energy, electric capacity or ancillary services related to electricity services that are procured or to be procured on a wholesale basis;

“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;

“interested party” means any person who has a stake, standing or is affected by a situation;

“LCEP” means Least Cost Expansion Plan, which is a plan that a single buyer, or any other entity designated by the Government, 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 provider” 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 by the Commission that establishes, *inter alia*, the amount, type and timing of utility services to be procured by a single buyer following a hearing conducted by the Commission after a single buyer or any other entity designated by the Government, 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) generation services;
- (b) water supply services pursuant to a utility purchase agreement or any other similar 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 utility purchase agreement or

any other similar 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;

“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;

“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;

“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 to premises in 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.

Application.

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

PART II

Tender Planning

Interpretation
of term used in
Part II.

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

“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.

Principles of
procurement.

5.–(1) To safeguard the fair and equitable treatment of economic operators and to foster competitive pricing for the benefit of consumers, the Commission shall ensure that—

- (a) key decisions on procurement are well-documented, transparent and easily accessible so that RFP specifications in bidding documents 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 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; and
- (b) 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 and bidding documents 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 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 regulated services and the Commission and the relevant single buyer are in

agreement that the single buyer has the financial capacity to procure the additional regulated services, the single buyer shall conduct the RFP process for the additional regulated service in accordance with these Regulations.

(3) The RFP process may specify conditions, including the maximum amount of regulated services 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 make the contract award.

(5) Where an independent person conducts the RFP process and makes the contract award under sub-regulation (4), these Regulations 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 to initiate an RFP process in accordance with these Regulations.

(2) The Commission may, from time to time, 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 economic operators.

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

(5) The Commission may collaborate with the Government, international agencies, private sector entities and other parties they deem convenient 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.

Planning
determination.

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

- (a) an identification of variation between projected demand and available supply;
- (b) a recommended LCEP 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 and as part of this process, the Commission may publish a draft RFP for public comment.

(4) At the conclusion of the RFP dialogue, the Commission shall finalise the RFP bidding documents 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

9.-(1) Every single buyer or any other entity designated by the Government 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.

Requirement for LCEP.

(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.

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

Schedule.

(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 having due regard to the financial capacity of the relevant single buyer.

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 conduct RFP

11.-(1) After a call for competition, a single buyer shall, by agreement in writing with the Commission, follow a timeline for conduct of the RFP process.

Single buyer to agree on timeline.

(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.

Standard
bidding
documents and
codification.

12.-(1) The Commission may, in consultation with interested parties, develop and disseminate templates for standard bidding documents and establish other rules governing the procurement process in a code.

(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 needs provided that the single buyer has the financial capacity to procure the required regulated services.

(3) The bidding documents shall prescribe the bidding procedures and include the form of the utility purchase agreement that establishes the standard terms of the agreement and risk assignment between the parties of the agreement.

(4) The bidding documents 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.

(5) 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.

(6) The code may 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.

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

13.–(1) The preferred tendering method shall be a two stage open competitive bidding with a pre-qualification process in the first stage whereby bidders respond to a request for qualification that requires the bidders to provide evidence that they have adequate experience, technical staff and financial capacity to successfully complete the project and in the second stage in which pre-qualified bidders respond to a Request for Proposals.

Tendering
methods and
features.

(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 competition 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 made 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.

Past performance.

15. In evaluating the bids, the Bid Evaluation Committee may take into account the past performance of the bidder, particularly if it was previously successful in a bid in Belize or other jurisdictions.

Fairness and transparency of RFP process.

16.–(1) The single buyer shall avoid or mitigate circumstances that could give an unfair advantage to a bidder in the RFP process by taking any means necessary including, but not limited to, ensuring equal access to–

(a) any proprietary information of a licensee that may assist bidders or influence the Bid Evaluation Committee; and

(b) source selection information that is relevant to the eventual contract but may not available to all tenderers.

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

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 bidding document.

(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 utility purchase agreement.

(5) The terms of a utility purchase agreement published in the RFP shall not be altered in negotiation beyond the terms that bidders were invited to propose, except with the approval of the Commission and, in all other respects, the negotiations shall be in accordance with procedures prescribed in relevant regulations.

Emergency
situations.

19.—(1) The Commission, with the approval of the Government, may declare, in the public interest, that an emergency situation has arisen beyond the reasonable control of Belize.

(2) Notwithstanding sub-regulation (1), the Commission, with the approval of the Government, shall declare that an emergency situation has arisen beyond the reasonable control of Belize if, in relation to generation services, the single buyer provides notice to the Commission that there will arise, within a period of twelve months, a material shortfall in generation services.

(3) Where an emergency situation is declared in accordance with sub-regulation (1), the single buyer may undertake emergency generation procurement.

(4) The single buyer shall provide to the Commission and Minister notice of the terms of the proposed emergency generation procurement.

(5) A single buyer may undertake emergency generation procurement if there is no written objection from the Commission or the Minister within two weeks of the notice and provided that it is a condition of the proposed emergency procurement that the required generation services shall be provided within ten months or less from the date of the notice.

PART IV

Miscellaneous

20. 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.

21.-(1) The Commission shall prepare and promulgate the code within sixty 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.

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.

Review of code.

Protests.

23.–(1) Any person who participated in a RFP process may protest the resulting decision or any order of the Commission made in relation to the RFP process.

(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 the bidding document or 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.

Force majeure and material mistake.

24.–(1) Where the Commission makes a determination that force majeure has affected relevant market conditions, the Commission may cancel a call for competition or any RFP process being then undertaken.

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

Repeal.
S.I. 83 of
2024.

25. The Public Utilities Commission (Request For Proposals) Regulations, 2024, is repealed.

Transitional.
S.I. 83 of
2024.

26.–(1) Notwithstanding the repeal, the Commission may approve a utility purchase agreement if the Request for Proposal process that began prior to the commencement of these Regulations was subject to a competitive process that qualified as a least cost procurement as per the planning determination at the relevant time.

(2) The Commission may declare as closed anything done before the coming into force of these Regulations where a utility purchase agreement was not signed between

a single buyer and the successful bidder and approved by the Commission.

27. 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 an amended LCEP with 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 determination.
7. Where no less than ninety days have passed since the initial filing of the LCEP and subsequent amended filings remain, in the opinion of the Commission, to be unsatisfactory in providing sufficient scope and depth to make a sound planning determination, the Commission shall issue its planning determination in accordance with the policies and directives of Government, and, to the extent the Commission considers sufficient, the latest LCEP filed by the single buyer.

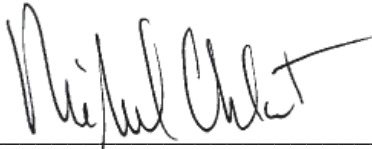
MADE by the Public Utilities Commission this 18th day of October, 2024.



(MR. DEAN MOLINA)

Chairperson of the Public Utilities Commission

APPROVED by the Minister responsible for public utilities
this 18th day of October, 2024.



(HON. MICHEL CHEBAT)

*Minister of Public Utilities, Energy, Logistics
and E-Governance
(Minister responsible for public utilities)*