

06-06-06

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

--- In the Matter of --- )  
PUBLIC UTILITIES COMMISSION )  
Instituting a Proceeding to Investigate )  
Competitive Bidding for New Generating )  
Capacity in Hawaii. )  
\_\_\_\_\_ )

DOCKET NO. 03-0372

POST-HEARING OPENING BRIEF

OF

HAWAII RENEWABLE ENERGY ALLIANCE

AND

CERTIFICATE OF SERVICE

PUBLIC UTILITIES  
COMMISSION

2006 JUN -6 P 1:09

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**I. INTRODUCTION**

The Hawaii Renewable Energy Alliance hereby submits this document, constituting our Post-Hearing Opening Brief, dated June 2, 2006, to the Public Utilities Commission ("Commission"), in accordance with the Commission's Prehearing Order Number 20923 (Reference Docket No. 03-0372).

HREA supports competitive bidding for all new generation in Hawaii and believes there will be overall benefits to Hawaii's utilities and their ratepayers and Hawaii's economy. These include the potential to mitigate utility rate impacts in the near term and stabilize rates in the long term with increased use of renewables.

The implementation and impact of competitive bidding will be paced, in part, on: (1) how rapidly Hawaii's electricity market is opened to increased competition, (2) getting the implementation of competitive bidding right, (3) encouraging innovation in the market place, and (4) the ease of market entry to independent power producers.

The remainder of HREA's Post-Hearing Opening Brief is organized as follows:

- o Section II: HREA's Re-Stated Final Statement of Position; and
- o Section III: HREA's Response to Commission Questions – reference Commission letter, dated December 30, 2006 to all Parties, is attached as Exhibit A.

## II. HREA's Re-Stated Final Statement of Position

HREA's re-stated final position on the issues as stated on page 2 in the Prehearing Order:

### 1. What are the benefits and impacts of competitive bidding?

#### HREA Position:

Overall Benefits. HREA believes competitive bidding will provide the following overall benefits to Hawaii's ratepayers and its economy:

- increased innovation and lower prices in the supply of electrical products and services,
- improved system efficiency, reliability and safety, and increased customer choice, and
- mitigate utility rate impacts in the near term and stabilize rates in the long term with increased use of renewables.

HREA notes that similar benefits were identified in Docket No. 96-0493 (Instituting a Proceeding on Electric Competition, Including an Investigation of the Electric Utility Infrastructure in the State of Hawaii):

- The Consumer Advocate stated: "the primary objective of introducing competition to the electric industry must be to reduce the price of electric services over time for all consumers, while retaining or enhancing safety, reliability, environmental protections and consumer protections<sup>1</sup>."
- In its draft position statement<sup>2</sup>, the Department of Business, Economic Development and Tourism (DBEDT) stated: "the principal benefits expected of competition are lower prices that will result from greater efficiency and enhanced competitiveness for Hawaii's economy. In addition, greater use of advanced technologies could be anticipated."
- DBEDT also quoted from the Clinton Administration's *Comprehensive Electric Competition Plan*:<sup>3</sup> "We believe that a more competitive electricity industry will provide immense benefits to individual American consumers as well as being an overall boon to our economy. It will result in lower prices, a cleaner environment, greater innovation and new services, a more reliable power supply grid, and save the government money."

<sup>1</sup> Exploring Opportunities for Competition in Hawaii's Electric Industry, Division of Consumer Advocacy, State of Hawaii, June 5, 1998, pg. ES-1.

<sup>2</sup> Draft Position Paper of the State of Hawaii Department of Business, Economic Development and Tourism Regarding Electricity Competition in Hawaii, Docket No. 96-0493, June 4, 1998, pg. 2.

<sup>3</sup> Comprehensive Electricity Competition Plan, U. S. Department of Energy, see: <http://www.doe.gov>, April 13, 1998.

Specific Benefits. HREA anticipates the following specific benefits from the design and implementation of a vibrant competitive bidding process in Hawaii:

- Lower Prices. Lower prices to all consumers over time, as conservation, energy efficiency, and renewables are implemented. Note: conservation and energy efficiency measures will generally be more cost-effective than conventional generation. Under our current RPS law, wholesale renewable electricity must be at or below the utility's costs. Therefore, the utility's rates cannot go up on account of renewables. Furthermore, HREA believes there is opportunity through competitive bidding to acquire renewables at prices lower than conventional sources;
- Increased innovation. Innovation is a natural result of competitive bidding, as bidders seek to gain advantages by offering lower prices and/or expanded facility features and capabilities. On the other hand, an improperly designed competitive bidding process can stifle innovation and competition;
- Increased customer choice. HREA believes opening of the wholesale market to greater competition will lead to the proposal and evaluation of a greater number of potential projects in IRP. For example, consumers will provide input to the utilities in the IRP process, if they see the utility takes action on the consumers' input. However, achieving customer choice will also depend on whether potential bidders believe their proposals will be treated fairly, including the timely award of a contract with the utility should they become a winner in a competitive bidding process;
- Increased renewable energy and storage facilities. The use of renewables will increase over time, paced in part by RPS and other state energy policies. HREA believes that complementary storage

technologies, such as pumped hydro, will help facilitate increased renewable use, as well as provide other system benefits, and thus should be supported by the utility and community;

- Improved system efficiency. System efficiency will improve over time if new generating units have higher operating efficiencies than existing power plants. The improvements in system efficiency will translate to lower lifecycle costs and potentially lower utility rates. This trend will be enhanced with a shift away from central generation (CG) to Distributed Generation (DG). However, HREA anticipates that efficiency gains in new fossil CG and supply-side DG will be off-set by increased fuel costs;
- Reduction of greenhouse gas emissions. Clearly, reduction of greenhouse gas emissions is a collateral benefit of increasing conservation and renewables. However, installation of more efficient fossil CG, DCG and DG would only serve to increase greenhouse gas emissions. On the other hand, if existing fossil CG is replaced by more efficient CG or DG, or fueled by renewable fuels, such as biodiesel and ethanol, then there could be a net reduction in greenhouse gas emissions; and
- Enhanced energy security. Reducing our fossil energy use will help us start down the path towards enhancing energy security in electrical sector in Hawaii. In addition, we must “harden” our electricity infrastructure. HREA believes the best way to do that is to initiate an all-out effort in implementing distributed energy resources, which include DG and Demand-Side Management (DSM) measures.

So, how will competitive bidding help enhance energy security? As noted above, competitive bidding will lead to more innovation, which will result in cost-effective alternatives to fossil energy. Meanwhile, if we still

feel the need to construct and operate conventional resources, we should give some thought to down-sizing and distributing them, and while we are at it, renewably fuel them.

Impacts. HREA anticipates the following specific impacts with implementation of competitive bidding in Hawaii:

- Need to improve IRP to facilitate competitive bidding. HREA believes we have to improve IRP. See detailed discussion below on issue 2.d;
- Costs and benefits of structuring competitive bidding of wholesale power sources. This is one of the major challenges/opportunities on this docket. See detailed discussion below on issues 2.a to 2.c;
- Assuring system reliability and safety. HREA believes system reliability and safety can be assured and improved over time by:
  - including reliability and safety requirements in the specifications for requests for proposals (RFPs) in competitive bidding, and
  - requiring reporting of reliability and safety attributes on existing and future facilities.
- Protecting consumer interests. HREA believes consumer interests can be protected and addressed over time by:
  - Commission actions to ensure that competitive bidding is designed and implemented in a fair, equitable and even-handed manner, and
  - requiring competitive bidding on all new wholesale power facilities and retrofits to existing facilities.
- Balancing investor owned utility (IOU) interests with the interests of the ratepayers. HREA believes there is a significant imbalance in favor of the Investor Owned Utility (IOU) compared to the ratepayer. The ratepayer

needs some relief, and the best way to provide that relief would be to preclude further ratebasing of utility, self-build projects and requiring the IOU to bid out all new generation. Furthermore, the likely result of competitive bidding will be lower costs, mitigating against rate increases in the near-term and offering the opportunity to stabilize rates in the long-term. Therefore, HREA believes the:

- IOU should be **NOT** be allowed to bid on new wholesale power, and
- IOU, if it so desires, should be allowed to establish a utility-affiliate for the purpose of competing for the provision of wholesale power to the grid.

**2. Whether a competitive bidding system should be developed for acquiring or building new generation in Hawaii”**

**HREA Position:**

HREA's position is “YES”, a competitive bidding system should be developed for acquiring or building new generation in Hawaii

**If the answer is “yes”, then:**

- a. How can a fair competitive bidding system be developed that ensures that competitive benefits result from the system and ratepayers are not placed at undue risk?**

**HREA Position:**

HREA considers this to be both an interesting and thought-provoking question. First, we are not sure how to define “undue risk.” Undue risk can have several connotations, e.g., *excessive, unnecessary and unjustified*. We observe that rates have gone up when the utility installs a new power plant, and rate increases are not viewed by the utility as placing undue risk on the ratepayer. We also observe that the proposed rate increase for the East Oahu Transmission Project is on the order of

10%. So is a rate increase of 10% considered to be putting the ratepayer at undue risk? Depending on one's perspective, one could say yes or no, depending upon whether one thought the rate hike was excessive, unnecessary and/or unjustified.

Let's consider another potential for "undue risk." Currently, ratepayers pay for all of the costs for electrical service provided to them by the utility, pursuant to their customer class rates and charges approved by the Commission. Hence, HREA believes it is fair to say that the ratepayers assume most, if not all, of the risks associated with their electricity service. The question is whether some of their risks, such as the risks associated with new IOU self-build projects and fossil fuel costs are undue? We believe they are. HREA believes further that the ratepayer should not have to absorb all the risks.

Consequently, we believe in order to avoid "undue risk" to the ratepayer the:

- o IOU should be **NOT** be allowed to bid on new wholesale power, but be allowed, if it so chooses, to establish a utility-affiliate for the purpose of competing for the provision of wholesale power to the grid; and
- o Utility should be required to share some of the fossil fuel cost risks on its existing facilities, e.g., the utility should **NOT** be allowed to pass through all fossil fuel cost increases as it does now via the "Energy Cost Adjustment Clause."

Ideally, the utility will identify resource needs in IRP, including preparation of preliminary specifications and costs for the desired new wholesale generation resources (site, size, type, installed cost, O&M costs, lifecycle costs, timeline, etc.), and determine which resources would be acquired via a competitive bidding process. The utility would review these resource needs and plans with its IRP Advisory Group (AG). The utility when then incorporate comments from the AG as it revises its current IRP or prepares a new draft (as appropriate) for submittal to the Commission. Subsequently, for a specific resource requirement approved by the Commission to be competitively bid, the following are HREA recommended two models for implementation of a fair competitive bidding process that would follow:

**Model 1 (Competition without a Utility but with a Utility-Affiliate)**

The competition would proceed with the following steps:

- o Utility IRP study for new resources. In addition to the summary above, see also our comments in section 2.d on improvements to IRP;
- o Preparation of a Solicitation Bid Package. Based on its IRP study and comments from the IRP AG, the utility would prepare a solicitation bid package, which would include the:
  - Technical Requirements: desired resource type (s) (fossil, renewable, storage, DSM), desired capacity or energy range (in kW/MW or kWh/MWh), diurnal capacity and energy delivery schedule, reliability specifications, operation date, standard offer contract (SOC) for purchase of power from the successful bidder (s), and a summary of the utility's parallel planning activity<sup>4</sup>, including the utility's backstop proposal;

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<sup>4</sup> The utility's parallel planning activity would include a backstop proposal and other measures addition to the backstop proposal to meet system requirements should a RFP fail or a selected third party or affiliate fail.

- Required Technical, Financial and Contractual Information from Bidders:  
A proposal discussing how the Bidder will meet or exceed the desired technical requirements, the delivered wholesale cost of electricity with a proposed capacity and energy delivery schedule, a proposed power purchase agreement (PPA) based on the SOC (with any proposed modifications to the SOC), a management plan (e.g., construction and operation schedule based on an anticipated award and approval date of a PPA by the Commission, assessment of permitting actions required, and a plan for gaining community support for the proposed project), and a description of relevant technical and project experience and expertise;
- Evaluation and Selection Criteria: the specific evaluation criteria, such as the technical proposal, proposed delivered energy cost, management plan, relevant technical and project experience and expertise, and a description of how the proposals will be evaluated, included relative ranking of the evaluation criteria; and
- Review and approval by the Commission: the solicitation package would be forwarded to the Commission, which would be assisted by an Independent Observer (IO).<sup>5</sup> The IO would review and comment on the solicitation package and make recommendations for modifications to the package.

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<sup>5</sup> The IO would be hired by and report to the Commission. The IO would assist the Commission during all phases of planning for and acquiring new resources. The primary role of the IO in Model 1 is to make sure that the utility does not unduly prefer its own affiliate, and also to comment on the overall fairness and success of the competitive bidding process.

- o Solicitation and Award Process. Following approval from the Commission, the utility would proceed with the solicitation process in the following steps:
  - Announcement and Bidders' Conference. Concurrently, the utility would announce the release and due dates of the solicitation, and the date of a Bidders Conference (PBC). At the PBC, the utility would present and discuss the solicitation package to all interested Parties. Following the presentation, the utility would do its best to answer all questions during this period. Subsequently, the utility would prepare and distribute to all interested Parties a summary of the meeting, including answers to all the questions that were raised by the Parties;
  - Bidder Pre-Qualification Process. The utility may elect to screen and pre-qualify potential Bidders for receipt of the actual solicitation. If this option is selected, the utility should include the pre-qualification process in the draft solicitation package and obtain approval for the process from the Commission. Secondly, the utility will need to inform the potential Bidders in the solicitation announcement and discuss the pre-qualification process in detail during the PBC. HREA believes this may be a good approach, as a pre-qualification process could save time and resources for both the potential bidders and the utility;
  - Review and Evaluation of the Proposals. The utility and the IO would conduct independent reviews and evaluations of all proposals, and forward recommendations for awards to the Commission. Note: the IO would forward recommendations to the Commission prior to the utility. The IO would subsequently review the recommendations made by the utility and, ideally, provide comments to the Commission concurrently with the transmittal of the utility's recommendations;

- o Commission Approval/Project Award and Post-Award Activities. The Commission would review and approve, if appropriate and subject to possible modifications, the recommendations of the utility. The Commission would consult with the IO during their deliberations. Following the selection of the winning Bid, the Commission would monitor the negotiation of and subsequently approve the PPA. Following the award and approval of the PPA by the Commission, the utility would debrief the losing Bidders. HREA believes this debriefing should focus on the strengths and weaknesses of the proposals and areas for improvements on future solicitations, and should not specifically identify individual Bidders or the relative ranking of the proposals. One possible exception would be when back-up proposals are to be considered at a later time. Finally, the IO would provide an overall assessment of the solicitation process to the Commission, include recommendations for improvement.

Model 2 (Competition without a Utility or Utility-Affiliate). This model assumes the same basic steps as in Model 1. The only differences are in the projected role of the IO. Since there would not be concerns about the utility favoring its affiliate, the role of the IO would be modified as follows:

- o Utility IRP study for new resources. No changes.
- o Preparation of a Solicitation Bid Package. No changes, the IO would still assist the Commission in reviewing the draft solicitation bid package.
- o Solicitation and Award Process. In this model, the IO would not conduct an independent review and evaluation of all proposals. Instead, the IO would review the recommendations made by the utility and provide comments to the Commission concurrently with the transmittal of the utility's recommendations. Similarly to Model 1, the Commission would consult with the IO during their deliberations, and the IO would provide an overall assessment of the solicitation process to the Commission, including recommendations for improvement.

**b. What are the specific competitive bidding guidelines and requirements for the prospective bidders, including the evaluation system to be used and the process for evaluation and selection?**

**HREA Position:**

In addition to the discussion in section 2.a (above), HREA would like to make the following comments and recommendations:

- o We support the Consumer Advocate's (CA's) proposal (Reference page 63 of the PSOP)... "the utilities should be held accountable to design and conduct specific solicitations consistent with the 'best practices' in the industry;" and

- As noted above, HREA supports the option of pre-qualifying potential Bidders. This process could differ for each solicitation depending on the technical requirements developed in IRP.

**c. How can a fair competitive bidding system encourage broad participation from a range of prospective bidders?**

**HREA Position:**

In addition to the discussion in response to issues 2.a and 2.b (above), HREA has the following comments and recommendations:

- Independent Review of the Solicitation Process. HREA believes this is the single-most important step to ensure that the competitive bidding system is fair and will encourage broad participation from a range of prospective bidders. If there is even the slightest appearance that the utility can unduly favor its affiliate (or itself), prospective Bidders will be reluctant to participate;
- Standard Offer Contract. A standard offer contract (SOC) is absolutely needed as an element of the RFP. While a Bidder may be able to meet the overall technical requirements of the RFP, the Bidder will NOT be able to prepare an adequate offer for the delivered price of electricity, if he does not know the terms and conditions of the SOC. Furthermore, if the Bidder is not assured that he will be awarded a contract upon securing a winning Bid, he will be reluctant to participate. Please note that a SOC is different than a model PPA as proposed by the utility. Specifically, a SOC is a document that must be signed by the utility if the Bidder agrees with and signs the SOC, whereas a model PPA is a starting point for negotiations. There is a BIG difference, and if a Bidder sees a model PPA instead of SOC in a solicitation package, he may be hesitant to submit a proposal;

- Uniform availability of data and information. The Commission must be able to ensure that all prospective bidders are provided with all relevant data and information available to the utility regarding the project. This is particularly true if the bidders are in competition with a utility-affiliate (Model 1); and
- Commission as the watchdog. HREA believes that the Commission will need to act as the watchdog to monitor and enforce the competitive bidding process to ensure that it is fair and that broad participation is encouraged.

**d. What revisions should be made to the integrated resource planning process?**

**HREA Position:**

HREA believes each element of the existing process can be improved. HREA supports the use of competitive bidding to select all projects and programs for the 5-year plan, rather than the current approach of identifying resources in the IRP process and pursuing implementation at a later time. We will use the following discussion of the generic elements in an improved IRP process to illustrate our recommendations:

- Forecasting. Forecasting now includes traditional estimates of new load growth taking into consideration the impacts of certain DSM measures. Forecasting should now include all the DSM measures as discussed below.
- Demand-side Management (DSM)<sup>6</sup>. Demand-side management should include evaluation of measures to reduce demand taking into consideration implementation options, e.g., utility-implemented DSM program elements versus acquiring DSMs via competitive bidding. The following are current and proposed new (which are *italicized*) measures:

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<sup>6</sup> For the purpose here, HREA is not discussing the potential implications of a future Commission decision to establish a third party DSM utility.

- Traditional energy-efficiency and load management,
- Energy conservation, including solar hot water, *sea water air conditioning and solar air conditioning*,
- *Net metered renewable systems, and*
- *DG, including CHP.*

Note: recommendations would be provided to Forecasting and Integration.

- Supply-Side Management (SSM). Supply-side management should include evaluation of conventional, renewable and supply technologies taking in consideration alternative ownership and operation structures. For each group of technologies the process should include an assessment of:
  - Near-Term Needs. The SSM Committee should evaluate and select the preferred technologies, projects and programs to be considered for the 5-Year Action Plan. The Committee should provide details on the preferred technologies sufficient for a competitive solicitation (see also comments below in the Integration Section); and
  - Mid- to Long-Term Needs. The SSM should continue to track, evaluate, and recommend to the Integration Committee preliminary supply-side technologies for consideration in the next 5-Year Action Plan and those technologies to be tracked over the long-term (10 to 20-year timeframe).

Note: Recommendations would be provided to Integration.

- Integration. Overall, whereas in the past, a number of alternative IRPs were generated from the committee inputs, HREA believes it will be more productive to go directly for the “golden fleece” – the plan to meet our RPS law, mitigate energy and fuel supply risks and move us down the path to sustainable energy. HREA believes this will require:

- Maximizing the amount of DSMs: the Integration Committee would select the DSM measures for the 5-Year Action Plan, based on a thorough evaluation and review of the costs/benefits of each measure recommended by the DSM Committee. The Committee would also review and recommend implementation options: continuation of existing utility-implemented DSM programs, introduction of new utility-implemented DSM programs, and acquiring DSM programs via Competitive Bidding;
- Optimizing the types and amounts of SSMs: the Committee would seek to optimize the types and amounts of SSMs based on evaluating the remaining load to be supplied after maximizing the amount of DSMs. The Committee would then recommend the preferred technologies, projects and programs for the 5-year action plan. HREA believes this approach - DSM first then SSM - will provide the utility with more accurate assessment of which DSM/SSM options will be most cost-effective for meeting future demand, RPS and other IRP goals;
- Selecting the Preferred DSM and SSM technologies. As with all Integration activities, some iteration will be required to reach the "ideal" combination to meet demand, RPS and other IRP goals in the most cost-effective manner. For example, when a preliminary assessment of preferred DSMs is established, the Forecasting Committee would need to review and revise its forecast as appropriate. Another iteration would occur after a competitive solicitation for DSMs, should that be pursued by the utility. Note: HREA believes there is also a good argument for an all-source solicitation, whereby the mix of DSM/SSM could be determined with less iteration;
- Providing Inputs to the Advisory Group. HREA recommends that the Integration Committee provide timely progress updates to the Advisory

Group. This will be especially important for the AG's review and comments on the 5-Year Action Plan, including decisions on which resources to acquire via competitive bidding. Note: HREA anticipates that recommendations from the Advisory Group back to the Integration Committee might require an additional iteration.

- Advisory Group. The Advisory Group is an independent group of non-utility stakeholder organizations and individuals. HREA recommends:
  - Make up of the Advisory Group. The Advisory Group should have a balanced number of members from the key stakeholder groups, such as government, industry, community organizations, environmental organizations, and the community at-large;
  - Review and comment on the IRP process and results. The Advisory Group has traditionally reviewed and commented on the IRP process, proposed plans and recommended IRP. In addition, HREA recommends that the Advisory Group's recommendations be given more weight in the overall process, and specifically that the utilities resolve to work in a more collaborative manner with the Advisory Group. For example, as noted above, Advisory Group comments may result in a need to re-do (iterate) previous analysis;
  - Ensuring inputs from the utility's customers – HREA recommends that the Advisory Group assist the utility in soliciting input and comments from the community at-large. In this regard, HREA suggests that HECO review and implement MECO's current efforts to reach out to the community as a potential model for HECO's IRP; and

- Advisory Group Overall Goal. HREA believes that the overall goal of the Advisory Group should be to achieve a collaborative effort with the utility, such that the resulting IRP does not need to be contested.
- Implementation. HREA believes an improved, vibrant IRP process should result in a more collaborative approach to reaching agreement on how HECO can meet future demand, RPS and other IRP goals in a cost-effective manner. Following the deliberations of the IRP Committees, including the final recommendations from the Integration Committee, the utility will have the ultimate responsibility to prepare, review and submit the Preferred IRP plan to the Commission. To re-iterate, HREA believes the most significant improvement to IRP will be the introduction and use of competitive bidding as described above to design the 5-Year Action Plan.

### **III. HREA's RESPONSE TO THE COMMISSION'S POST-HEARING QUESTIONS**

See Exhibit A.

End of HREA's Post-Hearing Opening Brief.

DATED: June 6, Honolulu, Hawaii

  
President, HREA

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**I. Competitive Bidding: Mandatory or Voluntary?**

**A. Under what circumstances, if any, should the Commission require competitive bidding? Options:**

**1. Require competitive bidding in all circumstances, without exception**

HREA Response:

HREA supports competitive bidding as the preferred approach to acquiring new generation. Ideally, there should be no exceptions. See additional comments below.

**2. Require competitive bidding in all circumstances, with the exception of one or more of the HECO Utilities' three pending projects**

HREA Response:

HREA does not believe the three pending projects should be granted automatic exceptions to the competitive bidding process. Specifically, projects can be "bought and sold" at any point in their development and operational cycle. Therefore, HREA recommends that the Commission solicit letters of interest from Independent Power Producers (IPPs) for the purchase of these pending projects or potential alternate projects. If there are no expressions of interest on a specific project, HREA recommends that the Commission grant an exception for that project. If there are expressions of interest on a specific project, HREA recommends the Commission request detailed proposals from the interested IPPs and HECO for the completion and operation of the specific project.

**3. Require competitive bidding in all circumstances, with the exception of --**

**a. one or more of the HECO Utilities' three pending projects**

HREA Response:

See response to question 2 above.

**b. any project for which the competitive bidding would be impractical, due to:**

Exhibit A

HREA Response to the Commission's Post-Hearing Questions

**(1) size**

HREA Response:

Project size in MWs might be one possible criterion for granting an exception, or perhaps a dollar threshold, which would vary by island might be better.

**(2) emergency timing**

HREA Response:

HREA would agree that emergency timing (or situations) could be another criterion, if the criterion was applied only to repairs or temporary measures to repair or replace generation that was damaged or failed catastrophically.

**(3) lack of developer interest**

HREA Response:

HREA would agree that "lack of developer interest" (or "non-utility interest") could be a criterion, as discussed in sub-paragraph I.A.2 above. Again, HREA believes the Commission, not the utility, should be the one requesting letter of interest..

**(4) utility expansion or repowering<sup>1</sup>**

HREA Response:

Assuming that the Commission has granted the utility the authority to expand or repower an existing facility, HREA supports the utility bidding out as much of the actual work as possible, i.e., we do not support granting the utility an exception.

**(5) other factors**

HREA Response:

At the present time, we cannot think of any other situation whereby the utility could be granted an exception from competitive bidding new generation.

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<sup>1</sup> The exemption here is from competitive bidding to perform the actual expansion or repowering; it is not an exemption from an opportunity to compete to supply the amount of capacity that the utility is seeking to create through the repowering or expansion.

Exhibit A  
HREA Response to the Commission's Post-Hearing Questions

- c. An exemption for impracticality is available only after a Commission finding based on a submission by the utility. A Commission finding of impracticality does not insulate the utility from a Commission finding that such impracticality was a result of utility imprudence.**

HREA Response:

HREA agrees and supports the statement above. At the present time, we cannot think of situation whereby competitive bidding could be determined to be impractical other than the situations discussed above in sub-paragraphs a. and b.

**4. Do not require competitive bidding in any particular case, but**

- a. require utility to file explanation of each decision to use or not to use competitive bidding, and**

HREA Response:

HREA strongly supports the position that competitive bidding is the preferred mechanism for acquiring new generation. Consequently, the burden of proof would be on the utility to justify any exceptions to competitive bidding. This burden should be required to be met in IRP and in situations that occur outside of IRP.

- b. reserve to the Commission the authority to require competitive bidding in particular cases**

HREA Response:

Given our preference for competitive bidding in all cases, HREA doesn't believe the Commission would need reserve the authority for particular cases at any stage of the IRP or outside the IRP. The Commission has the authority both to act on its own motion requiring competitive bidding, and to rule negatively on a request by the utility for an exception or exemption from competitive bidding.

**5. The three pending projects: showing of interest**

- a. Should the Commission require the utility to issue a request for showing of interest (i.e., a document less formal than an RFP)?**

HREA Response:

No. HREA prefers (reference our response to sub-paragraph I.A.2) that the Commission is the request of showing of interest.

**Assume the Commission requires the utility to issue a request for showing of interest. Assume further that one or more apparently viable respondents indicate interest. Should the Commission require an abbreviated competitive process? What elements should the process contain?**

HREA Response:

Yes. The elements of the process should be the same as those for a normal competitive bidding solicitation. However, HREA anticipates that the technical requirements could differ substantially from the normal process. For example, in the normal process, there would be general requirements, which would allow bidders room to propose alternate solutions. In the case of a pending process, the utility would have already developed a detailed set of technical requirements and costs estimates, which in turn could provide potential bidders one primary bidding option, i.e., meet or beat the utility's planned self-build project. Furthermore, assuming that the utility has control of their project site, the bidders should be offered an opportunity to buy or lease the site, if the utility owns the site, or to buy or lease the site from the actual site owner. Note: HREA also believes the RFP should also allow bidders to propose alternative solutions to meeting the utility's requirements. The challenge for the bidders to demonstrate how they can meet (or exceed) the utility's requirements on (or before) the utility's planned schedule and/or at lower costs and/or with more favorable externalities.

Exhibit A  
HREA Response to the Commission's Post-Hearing Questions

**6. Leave the determination for competitive bidding of resources to the IRP process.**

HREA Response:

Assuming that the IRP process can be improved to including integration of competitive bidding, HREA supports the goal of determining the acquisition process in IRP. However, HREA believes there will continue to be times when competitive bidding will need to be implemented outside of IRP, such as during periods where there is not an approved IRP or when circumstances change such that a resource, which is not identified in an approved IRP, is desired.

**B. KIUC Exemption**

**Which of the following actions should the Commission take?**

**1. exempt KIUC entirely from competitive bidding requirements**

HREA Response:

No. KIUC has indicated their intention to competitively bid all new generation projects, albeit in a manner to meet the conditions of RUS and their lenders..

**2. exempt KIUC from specific features of competitive bidding requirements**

HREA Response:

No. KIUC has indicated their intention to competitively bid all new generation projects, albeit in a manner to meet the conditions of RUS and their lenders.

**3. determine KIUC exemptions on a case by case basis**

HREA Response:

Yes. KIUC should have the right to request exemptions, if they desire, using the same criteria as approved for HECO.

**4. grant no exemption to KIUC**

No. KIUC should have the right to request exemptions, if they desire. See also response above to sub-paragraph 3.

## II. Establish the Type and Timing of New Generation

### A. How should the Commission integrate competitive bidding with IRP?

#### 1. General questions

##### a. Which of the following options most efficiently integrates competitive bidding and IRP?

- (1) **The IRP process first identifies a preliminary preferred resource plan (including capacity, energy, timing, technologies and other preferred attributes); then the utility or IE conducts a competitive bidding process (with the IRP-determined characteristics described in the RFP); then the selected resources become the final integrated resource plan.**

HREA Response:

See our response to (2) below.

- (2) **The IRP determines the need for capacity and the timing of need; the RFP is developed and issued during the IRP cycle; the bids received are evaluated within the IRP process (like any utility option is normally evaluated within the IRP process); the IRP process then selects bids to be part of a preferred plan and a contingency plan; contracts are negotiated with the winning bidders.**

HREA Response:

HREA prefers this approach for the following reasons:

- (i) The competitive bidding process will reveal which technologies are ready for Hawaii's market, whereas the conventional approach to supply-side analysis in IRP is based on utility/consultant estimates of performance and costs of alternate technologies;
- (ii) The conventional approach has been both contentious and subject to gaming. Specifically, the analysis is supposed to be independent of who owns the proposed projects. However, costs for utility and non-utility options will vary, and this is not recognized or identified in the current IRP process.

Exhibit A  
HREA Response to the Commission's Post-Hearing Questions

With the proposed market-test approach, the "real costs" of competing options will be revealed, as opposed to utility estimates; and

(iii) This approach will require less overall time to move from the definition of generation requirements in IRP to construction and operation.

Furthermore, there is a certain elegance in presenting a draft IRP to the Commission with winning projects, as opposed to "planned projects." Finally, HREA believes this approach will simplify the Commission's review process.

**b. Should the Commission require the utility to establish a separate competitive procurement process for as-available renewable energy generation?**

HREA Response:

HREA does not believe this is necessary, but the utility should be able to pursue a separate process if they so desired.

**c. What if a resource not identified in the IRP preferred plan seeks to compete for a slot?**

HREA Response:

HREA believes that IRP done right with the early use of competitive bidding will send a signal to the IPP industry, such that IPPs will be prepared to respond appropriately to RFPs. Given that there will be bidders' conferences, questions can be addressed regarding alternate approaches, such as resources not identified in the RFP. In some cases, this may make sense, but in others not. For example, if the RFP to solicit proposals for as-available renewables, a proposal for a fossil facility would not be acceptable.

**d. What specific amendments are necessary to the IRP framework to achieve the integration?**

HREA Response: See our response to sub-paragraph III.A.5.c.(1).

**2. Self-Build Option**

- a. Does the utility have a legal obligation to prepare a self-build option for each competitive bid?**

HREA Response:

No. In order to meet its obligation to serve, the utility may need to have a (public) backstop proposal for all solicitations for **firm** capacity, but HREA does not support the utility submitting a separate, confidential, bid that is different from its backstop proposal. Instead, HREA believes the utility has an obligation to advance its best proposal as the backstop proposal. Any other utility-related bidding different from the backstop proposal ought to be done through a separately capitalized, separately staffed, affiliate. See also our discussion below in sub-paragraph II.A.2.b.(2)(i).

- b. Assume the utility has a legal obligation to prepare a self-build option for each competitive bid. What role should the utility's self-build option play in the competitive procurement process?**

- (1) The utility's self-build option competes directly in the competitive bidding process. Under this direct competition option, should the utility's self-build option be –**

HREA Response:

HREA does not support this option. However, if the utility is allowed to submit self-build option in direct competition, HREA recommends:

- (i) The Commission administer the RFP with the assistance of an independent observer, which is hired by and reports directly to the Commission;
- (ii) The utility not be allowed to recover any of its proposal costs, regardless of whether their proposal wins; and

Exhibit A  
HREA Response to the Commission's Post-Hearing Questions

(iii) If the utility self-build proposal is awarded, the utility should be held to the project costs as bid. Specifically, if there are any project overruns, said overruns should be paid by shareholders, not the ratepayers.

**(a) announced in advance, in public, so competitors can try to beat it; or**

HREA Response:

Not necessary if the recommendations above are implemented.

**(b) submitted one day in advance, in private?**

HREA Response:

Not necessary if the recommendations above are implemented.

**(2) The utility prepares its self-build option in parallel to the competitive bidding process, as a backstop plan. Under this backstop approach,**

**(a) should the be backstop plan be described in the RFP?**

HREA Response:

Yes, and in sufficient detail to describe, at a minimum, the estimated system construction costs, operational profile, operation and maintenance costs, project timeline, and whether the utility's site can be leased or bought by potential bidders.

**(b) if a third party project is selected, at what point should the backstop plan be definitively abandoned?**

HREA Response:

HREA suggests that a project timeline with specific milestones/goals be incorporated into the Power Purchase Agreement (PPA). When the PPA is submitted for Commission approval, the utility can propose a milestone after which it proposes to abandon its backstop plan, and give its reasons.

Exhibit A  
HREA Response to the Commission's Post-Hearing Questions

The Commission can review the utility's proposal at that time, and require the utility to report the third party's progress, as well as its own progress. As each report is received, the Commission can revisit the appropriate point for authorizing the utility to terminate its backstop plan, after which time no further utility backstop plan expenses will be borne by the ratepayers. Note: HREA recommends that Commission take into consideration and assess whether any delays or failures on the part of the third party's project were beyond the third party's control.

**(c) if no third party project is selected, or if a third party project is selected but then fails,**

**i) must the utility proceed with the backstop plan without change,**

HREA Response:

In this scenario, the utility should have the option to proceed with its backstop plan<sup>2</sup> or to select another element of its Parallel Plan to meet system needs in a timely manner (see discussion below).

**ii) or should the utility be permitted (or required) to refine its backstop plan to take into account changes in circumstances since the backstop plan was formulated?**

HREA Response:

In this scenario, the utility should have the option to request authority to proceed with its backstop plan, or to consider other elements in its Parallel Plan, or to consider elements in its Contingency Plan.

Specifically, as noted in HREA's Plan B the:

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<sup>2</sup> The utility's backstop plan (or proposal) and other measures would be elements of the utility's Parallel Plan, i.e., there could be other measures in addition to the backstop proposal to meet system requirements should a RFP fail or a selected third party or affiliate fail.

Exhibit A  
HREA Response to the Commission's Post-Hearing Questions

- Parallel Plan includes the utility's backstop proposal and other possible elements to meet near term needs, in the case that either an RFP fails or a selected third party fails; and
- Contingency Plan includes additional elements to meet near term system needs, in the case that the utility's backstop proposal fails (in addition to the RFP and a selected third party). HREA believes the invocation of the Contingency Plan should allow for time to identify and implement long term solutions.

**3. Parallel planning**

- a. Under what circumstances should the Commission require the utility to engage in parallel planning?**

HREA Response:

HREA support parallel planning (as described above) as an ongoing activity.

- b. Should parallel planning be required for every selected third-party project?**

HREA Response:

HREA believes this decision should be made on a case-by-case basis, but the utility should remain at risk for a finding of imprudence if a third-party project for needed firm capacity fails and the utility did not advance a backstop plan.

- c. Should parallel planning be required for every selected utility project?**

HREA Response:

Given the definitions of Parallel Plan and Contingency Plan in sub-paragraph II.A.2.b.(3)(ii) above, HREA supports the utility's development of its Contingency Plan for the case that either its backstop proposal or its self-build project fails.

## Exhibit A

### HREA Response to the Commission's Post-Hearing Questions

Note: HREA believes it would be prudent to extend the Contingency Plan to cover the potential failures of utility self-build projects, should they be approved by the Commission.

**d. At what point in the development of a selected project should parallel planning cease?**

HREA Response:

See our response above to II.A 2.b.(2)(b).

**e. How should the Commission regulate this parallel planning and the associated cost?**

**(1) Should parallel planning activities be reflected in the IRP?**

HREA Response:

HREA believes this would be the preferred approach, including recovery of the utility's parallel planning activities as part of IRP.

**(2) Should parallel planning activities be anticipated in rate cases?**

HREA Response: No.

**(3) Should the cost of parallel planning activities be deferred for consideration and recovery in subsequent rate cases?**

HREA Response: No.

#### **4. Definitions**

**a. Self-build option: the option created by the utility pursuant to its legal obligation to meet load. The self-build option is submitted in the competitive bidding process.**

HREA Response:

HREA agrees with this definition, but does not support the utility itself being given a self-build option that is separate and apart from its "best" backstop proposal, which is made public in advance of the competitive bidding process.

Exhibit A  
HREA Response to the Commission's Post-Hearing Questions

- b. Parallel planning: the development efforts which the utility conducts when an independent bidder has been selected, to protect against the risk that the selected bidder fails to perform.**

HREA Response:

HREA prefers the following definition:

The development effort which the utility conducts, including the utility's public backstop proposals prepared in anticipation of system needs and requirements (such as would be defined in a RFP) and/or other measures to meet system needs and requirements, should a RFP fail or a selected bidder (third party or affiliate) fail

Note: HREA would also like to observe that the utility should also develop a Contingency Plan in the case that:

- (i) its backstop proposal or other measures of its Parallel Plan are invoked and fail, as discussed above in sub-paragraph II.A.2.b.(3)(ii), and/or
- (ii) the Commission approves the utility's self-build project and it fails, as discussed above in sub-paragraph II.A.3.c.

**B. Design of Request For Proposals**

**1. Scope of RFPs**

- a. Should the utility use a formal RFP for all of its power needs, or only for those projects exceeding a certain size?**

HREA Response:

Yes. HREA supports the use of a formal RFP for all utility power needs. As noted above in sub-paragraph, I.A.3.b.(1), a dollar threshold criterion, which would vary by island, might be appropriate rather than project size.

Exhibit A  
HREA Response to the Commission's Post-Hearing Questions

**b. Should the Commission require the utility to use standard offer contracts?**

HREA Response:

Yes. A bidder will not be able to provide firm price for delivered electricity, unless the contract terms and conditions are included in the RFP, i.e., in a standard offer contract (SOC). Moreover, if the bidder agrees with the terms and conditions in and signs the SOC, the utility should be obligated to sign the SOC.

**c. Should the Commission allow the utility to choose between RFPs that target specific resources, or RFPs with broad-based eligibility requirements? Or should the Commission make this decision on a case-by-case basis? Or should this decision be made as part of the IRP process?**

HREA Response:

- (1) HREA supports giving utilities the option of choosing between RFPs that target specific resources, or RFPs with broad-based eligibility requirements,
- (2) The Commission should review these decisions by the utility on a case-by-case basis, and HREA recommends that preference be given to renewables, and
- (3) This decision should be made by the utility as part of IRP or outside of IRP, subject to the approval of the Commission.

**d. Should the utility use a formal RFP for all of its power needs, or only for those above a certain size?**

HREA Response: See response to sub-paragraph a. above.

**e. Should the Commission require RFPs to seek proposals for each of the following, or leave the choice to the utility?**

- (1) conventional PPA

Exhibit A  
HREA Response to the Commission's Post-Hearing Questions

HREA Response: Yes.

**(2) tolling agreement**

HREA Response:

Yes. Tolling agreements should be made an option to bidders in the RFP.

**(3) fuel-sharing arrangement**

HREA Response:

Yes. Fuel-sharing agreements should be made an option to bidders in the RFP.

**(4) turnkey**

HREA Response:

HREA supports leaving the decision of whether to propose a turnkey project to the bidders. HREA does not support the utility's request of turnkey projects in RFPs, as solicited turnkey projects would, in essence, be surrogates for utility self-build projects. Furthermore, ownership and operation of generation is already overly concentrated in the hands of Hawaii's electric utilities; in order to improve the competitive market structure in the State, independent power producers and developers should be given the option to own and operate the projects they build.

**2. Pre-qualification requirements**

**a. Should the Commission require the utility to impose pre-qualification requirements?**

HREA Response:

HREA supports screening of potential bidders to determine their qualifications, i.e., expertise and experience. HREA also believes the initial screening process could be used to evaluate preliminary project concepts and proposals, which, in turn could be used to qualify bidders to submit full, detailed proposals.

Exhibit A  
HREA Response to the Commission's Post-Hearing Questions

**b. Assume the Commission requires the utility to impose pre-qualification requirements. What pre-qualification requirements are appropriate?**

HREA Response:

In general, HREA supports the use of each of the following pre-qualification requirements on a "pass/fail" basis. The utility should then specify in the RFP if the bidders have to meet each of these requirements, in order to be considered further, and whether the bidders will be allowed any time to remedy any failures.

**(1) mature technology**

HREA Response:

Yes. HREA also believes the utility should consider technologies, which may not fit the utility's current definition of mature technology, especially when such technologies have been successfully implemented elsewhere.

**(2) site control**

HREA Response:

HREA supports the evaluation of site control in terms of what stage the bidder is at, e.g., does he own the site, does he have a lease for the site, is he negotiating a lease, does he have a letter of intent with landowner, etc. The threshold for this requirement might be a letter of intent with a landowner.

**(3) creditworthiness**

HREA Response:

The utility should discuss the details of the minimum threshold in the RFP.

**(4) entry fee**

HREA Response:

Exhibit A

HREA Response to the Commission's Post-Hearing Questions

A nominal entry fee might be appropriate, assuming it is applied to all bidders, including the utility and paid by utility shareholders rather than its ratepayers.

**(5) operational flexibility**

HREA Response:

The utility should discuss the details of the minimum threshold in the RFP

**3. Process for developing RFP**

- a. Should the Commission require the utility to develop an RFP for each competitive procurement?**

HREA Response: Yes

- b. Should the Commission approve each RFP before issuance? [Questions relating to involvement of the IE are addressed in Part III.B below.]**

HREA Response: Yes.

- c. What generic features of an RFP should the Commission require the utility to develop, and obtain approval of, prior to a competitive procurement process?**

HREA Response:

The generic features should include but not necessarily be limited to:

- (i) Background description of utility system needs and backstop proposal (if appropriate);
- (ii) Description of the overall RFP process;
- (iii) Description of the evaluation and selection criteria;
- (iv) Suggested outline for the proposal;
- (v) List of required documentation; and
- (vi) Exhibits, including technical requirements, summary of the utility's backstop proposal, and standard offer contract.

Exhibit A  
HREA Response to the Commission's Post-Hearing Questions

**d. Should the Commission require the utility to develop the RFP in consultation with interested parties, or leave this decision to the utility's discretion?**

HREA Response:

HREA supports inclusion of interested parties as follows:

- (i) Announcement of the intent to acquire resources identified in IRP, e.g., the identification of a requirement of "XY" MWs of firm capacity (potential bidders could be sent Executive Summaries of the draft IRPs);
- (ii) Announcement of intent to release a specific RFP (Three months in advance of RFP release);
- (iii) Release of draft RFP (Two months in advance)<sup>3</sup>; and
- (iv) Bidder's Conference (One month in advance).

**e. What procedures should the Commission require to limit appropriately the time required for Commission approval?**

**(1) informal meeting with Commission or staff during the development process**

HREA Response: Yes, as long as the discussions are not ex parte.

**(2) Commission-imposed schedule for submittal of utility drafts, parties' comments, independent entity reports and Commission approval**

HREA Response: Yes.

**(3) other**

HREA Response:

HREA believes the Commission's review of draft RFPs could be expedited, assuming that certain items are approved and "standardized," e.g., general terms and conditions.

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<sup>3</sup> This schedule assumes a "mature" solicitation process, whereby there are templates for the primary elements of the RFP, e.g., description of the RFP process, general terms and conditions, etc, such that the main tasks are to prepare the detailed technical requirements and evaluation and selection criteria.

Exhibit A  
HREA Response to the Commission's Post-Hearing Questions

**4. Content of RFP**

- a. Should the Commission specify any content to be included in the RFP? For example:**

**(1) characteristics of utility bid option**

HREA Response:

Yes. HREA understands the utility bid option in this case to be its backstop proposal, a summary of which would be included in the RFP.

**(2) information on relationship between utility and its affiliate**

HREA Response: Yes.

**(3) method by which utility will weigh cost and noncost factors and rank bidders**

HREA Response: Yes.

**5. Definitions**

- a. Standard offer contract: A form contract, created in advance by the utility and modified and approved by the Commission, which constitutes a legal offer by the utility to buy from the third party. Acceptance by the third party forms a legally enforceable mutual obligation.**

HREA Response:

HREA supports this proposal as a working definition of a standard offer contract.

- b. Pre-qualification requirement: a requirement which a bidder must satisfy to be eligible to bid**

HREA Response:

HREA supports this proposal as a working definition of a pre-qualification requirement.

Exhibit A  
HREA Response to the Commission's Post-Hearing Questions

**C. Design of Purchased Power Agreement**

**1. Should the Commission require each RFP to include model agreements (modified as necessary to reflect the particular resource desired) for each of the following, or should the Commission leave this choice with the utility?**

**a. conventional PPA**

HREA Response: Yes.

**b. tolling agreement**

HREA Response: Yes.

**c. fuel-sharing arrangement**

HREA Response: Yes.

**d. turnkey agreement**

HREA Response: Yes.

**2. Process for developing PPA**

**a. Should the Commission require the utility to develop a PPA for each competitive procurement?**

HREA Response: Yes.

**b. Should the Commission require the utility to submit, for Commission approval, a subset of PPA provisions that can serve as model provisions?**

HREA Response:

Yes. HREA recommends that interested parties be allowed to review and comment on draft PPA/model provisions.

**c. Assume the Commission requires the utility to submit, for Commission approval, a set of PPA provisions that can serve as model provisions. What are the PPA provisions appropriate for this treatment?**

HREA Response:

HREA recommends the following in addition to the provisions included in subparagraph II.C.3. (below):

Exhibit A  
HREA Response to the Commission's Post-Hearing Questions

- (i) Interconnection requirements,
- (ii) Performance standards, and
- (iii) Infrastructure requirements and ownership issues,

**d. Should the Commission approve each PPA before issuance? [Questions relating to involvement of the IE are addressed in Part III.B below.]**

HREA Response: Yes.

**e. Should the Commission require the utility to develop the PPA in consultation with interested parties, or leave this decision to the utility's discretion?**

HREA Response:

Yes. As noted in sub-paragraph II.C.2.b (above), HREA recommends that the SOC/model PPA be developed by the utility in consultation with interested parties. Further, we recommend that interested parties have the right to submit comments directly to the Commission.

**f. Should the Commission review nonstandard PPA terms prior to the utility including the PPA in the RFP?**

HREA Response:

Yes. The Commission should review the entire PPA and the utility's justification for the various provisions before it authorizes release of the RFP.

**g. What procedures should the Commission require to limit appropriately the time required for Commission approval?**

**(1) informal meeting with Commission or staff during the development process**

HREA Response:

Yes, if ex parte issues can be avoided.

**(2) Commission-imposed schedule for submittal of utility drafts, parties' comments, IE reports and Commission approval**

HREA Response: Yes.

**(3) other?**

HREA Response: See our response to sub-paragraph II.C.2.e.

**3. Content of PPA**

**What generic features of a PPA should the Commission require the utility to develop, and obtain approval of, prior to a competitive procurement process?**

HREA Response:

HREA recommends that the Commission require the utility to develop, and obtain approval of, prior to a competitive procurement process all of the following generic features of a PPA:

- a. Definitions**
- b. Pricing and payment schedule**
- c. Quantity**
- d. Duration**
- e. Conditions Precedent**
- f. Milestones**
- g. Interconnection process**
- h. Force Majeure**
- i. Credit, security and insurance**
- j. Construction approval and dispatch rights**
- k. Regulatory out**
- l. Dispute resolution**
- m. Defaults**
  - (1) developer inability to execute PPA after selection**
  - (2) development delays**
  - (3) generator nonperformance**
  - (4) other**
- n. Remedies**
  - (1) forfeiture of security deposit**
  - (2) liquidated damages**
  - (3) utility ownership rights**
  - (4) other**

**4. Negotiations and dispute resolution**

- a. Should the Commission require the RFP to state that a bid binds the bidder if accepted by the utility?**

HREA Response:

This is another \$64 question. In general, HREA is concerned about protecting against the "low ball" bidder who wins and then raises his bid during negotiations.

## Exhibit A

### HREA Response to the Commission's Post-Hearing Questions

On the other hand, there may be cases where the bidder has to raise his bid due to factors beyond his control. HREA recommends that the bidders provide for "firm" price offers for a given timeframe, and given notice to any efforts to raise their bid will be closely scrutinized with the possibility of an award reversal.

- b. In responding to an RFP, should bidders have an opportunity to propose amendments to a model PPA?**

HREA Response: Yes.

- c. Should the Commission require the RFP to state that post-selection negotiations are permissible, but if not concluded within 60 days after selection will be resolved by the Commission based on written submissions only, pursuant to expedited procedures determined by the Commission at that time?**

HREA Response: Yes.

- d. Should the Commission require competitive negotiations among short-listed bidders, subject to dispute resolution?**

HREA Response: Yes.

- e. Concerning negotiations between the winning bidder and the utility, what forms of dispute resolution should the Commission allow or require?**

HREA Response:

HREA prefers the approach outline in sub-paragraph II.C.4.c.

#### **D. Selection Process**

**Regarding the choice between "open" and "closed" bidding, should the Commission**

- a. prohibit "open" bidding and require "closed" bidding?**

HREA Response: No

- b. require "open" bidding and prohibit "closed" bidding?**

HREA Response: No

Exhibit A  
HREA Response to the Commission's Post-Hearing Questions

**c. leave the choice with the utility?**

HREA Response:

Yes. HREA recommends that the type of bidding proposed by the utility be reviewed on a case-by-case basis, along with the utility's reasons therefore, found appropriate or inappropriate under the circumstances as part of the Commission's review of each RFP.

**E. What Time Frame Should Apply to the Competitive Bid Process?**

**1. Should competitive bidding rules or framework include deadlines for the completion of each stage in the process?**

HREA Response: Yes.

**2. Should these deadlines apply to Commission approvals as well as to utility and bidder actions?**

HREA Response:

HREA prefers to leave that decision to the Commission, but we suggest that it would be helpful for the Commission to establish "deadlines" for themselves, as well as to the utility and bidders.

Exhibit A  
HREA Response to the Commission's Post-Hearing Questions

**3. What would be reasonable deadlines for each step in the competitive bidding process?**

HREA Response:

HREA suggests that the schedule/deadlines be established in terms "months" in advance of the preferred operational date for the desired resource. For example:

<b>Milestone</b>	<b>Months</b>
Utility announces RFP intent	0 – also assumes RFP was identified in IRP
Utility releases draft RFP	3 – assumes RFP boiler plate in place
Bidders Conference	4 – could be waived at bidders' request
Utility releases RFP	6 – incorporates bidders' comments
Bidders submit proposals	9 – assumes early warning identified above
Utility evaluates proposals	11 – assumes Q&A with bidders
Utility selects winning bid (s)	12 – assumes request for final offers
Complete PPA negotiations	15 – based on SOC provided in RFP
Utility submits PPA to PUC	16 – utility time to prepare PPA package
PUC Approval of PPA	19 to 22 – only for illustrative purposes
Initiate Construction	20 to 26 or more depending on technology
Project Operation	32 to 38 or more depending on technology

### **III. Assure Even-Handed Competition Between Utility and Independent Generators**

#### **A. Utility Participation as Generation Competitor**

Notwithstanding HREA's objection to utility participation as a generation competitor, HREA will respond to the questions in the sub-paragraphs below.

##### **1. Does the utility's service obligation require it to --**

###### **a. determine the need for new resources**

HREA Response: Yes.

###### **b. validate each bidder's ability to serve**

HREA Response:

Yes, subject to review with an independent observer and the Commission.

###### **c. determine the operating flexibility necessary for a generating unit to fit reliably and economically into the utility's generation portfolio**

HREA Response:

Yes, subject to review with an independent observer and the Commission.

###### **d. determine the maintenance scheduling necessary for a generating unit to fit reliably and economically into the utility's generation portfolio**

HREA Response:

Yes, subject to review with an independent observer and the Commission, and

with consideration of coordination with all existing non-utility generating units.

###### **e. determine the interconnection facilities and transmission upgrades necessary to accommodate new generation**

HREA Response: Yes.

###### **f. offer a self-build option in any competitive bid process**

HREA Response: No.

###### **g. manage the RFP process, including**

Exhibit A

HREA Response to the Commission's Post-Hearing Questions

HREA Response:

HREA supports the utility's managing the RFP process, including all of the items below, **ONLY** in the cases where: (i) the utility is not advancing its self-build proposal, and (ii) if a utility affiliate is a bidder, an independent observer, hired by and reporting to the Commission, monitors the utility's activities and provides reports to the Commission (e.g., comments on the design of the RFP documents and evaluation criteria, assists in communication with the bidders, evaluates the bids and provides recommendations to the Commission independently of the utility, and comments on the negotiation process).

- (1) designing the RFP documents, including the PPAs;**
- (2) establishing evaluation criteria;**
- (3) communicating with bidders;**
- (4) evaluating the bids and selecting the winners;**
- (5) negotiating PPAs**

**2. Utility self-build option**

Notwithstanding HREA's objection to utility participation as a generation competitor, HREA will respond to the questions in the sub-paragraphs below, assuming that an independent observer is hired by the Commission as discussed in sub-paragraph III.A.1.g. (above), in the case that the utility is advancing its self-build proposal.

- a. For each resource need, should the Commission require the utility to present a self-build option?**

HREA Response: No.

- b. Assume that for each resource need, the Commission will require the utility to present a self-build option. Which of the following choices are appropriate role for the self-build option?**

- (1) a bid to be evaluated like any other bid, submitted confidentially one day ahead of deadline**

HREA Response: Yes, but HREA prefers option (2) or (3) below.

Exhibit A

HREA Response to the Commission's Post-Hearing Questions

- (2) a backstop proposal, to be utilized only if a winning project fails, regardless of whether the winning project's cost exceeds the backstop's cost**

HREA Response: Yes

HREA observes that the backstop proposal will represent the utility's preliminary estimate of costs, and will not be comparable in detail to the bids submitted in response to a RFP. For example, a winning project proposal will detailed analysis and documentation of projects costs to support their bid-in price for electricity. Whereas, a utility's backstop proposal will have estimates of projects costs, including the cost of delivered electricity.

- (3) a benchmark proposal, announced and described in detail at the time of the RFP, such that a nonutility bid must better the utility's benchmark to be considered**

HREA Response: Yes

- (4) other**

HREA Response: We have no other comments on this question at this time.

- c. Are there any circumstances under which the Commission should exempt the utility from identifying a self-build option?**

HREA Response:

The Commission could exempt a utility from identifying a self-build option, if the Commission determines there were be a strong market response, i.e., sufficient non-utility bidders to meet the utility's system needs as identified in a RFP, or perhaps in the case of a solicitation for as available energy.

- d. Structural separation issues**

- (1) Assume that (a) the Commission will mandate that the utility offer a self-build option; (b) the Commission will require the self-build option to come from the utility rather than a utility affiliate; and (c) an independent observer will monitor, and certify the appropriateness of, each stage in the competitive bidding process.**

HREA Response:

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HREA recommends that the independent observer be hired by and report to the Commission.

- (2) Should the Commission require an arms-length relationship between (a) the utility staff running the competitive bid process and (b) the utility staff preparing the self-build option?**

HREA Response:

Yes. However, it will be hard to overcome perceptions of self-dealing. HREA also has questions about how the Commission will be able to verify that structural measures are being honored.

- (3) Assume the Commission will require an arms-length relationship between (a) the utility staff running the competitive bid process and (b) the utility staff preparing the self-build option. What structural measures are necessary to create this arms-length relationship? Consider all of the following, plus other appropriate measures:**

- (a) There must be a written code of conduct signed by all employees involved, which code assures that there is no special treatment or advantage granted to the self-build project.**

HREA Response: Yes, this measure should be required.

- (b) The self-build bid team and RFP evaluation team must be in different buildings, with neither having access to the others building**

HREA Response:

No. The procurement of generation is not an ongoing process sufficient to require the long-term leasing of premises in other buildings. Segregation of employees by floors with controlled access, separate filing areas, copier rooms, etc. should be sufficient. On the mainland, spatial segregation into another building has traditionally been reserved for a remedy if a breach of a code of conduct or standard of dealing was breached.

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- (c) There is a prohibition on any oral or written contacts during the RFP/bid evaluation process between the utility's employees preparing the self-build option and the utility's employees on the bid evaluation team, other than contacts authorized by the Code of Conduct and the RFP.**

HREA Response:

Yes, this measure should be required. The Commission may want to mandate that its IO be present during all meetings of the bid evaluation team, as well

- (d) All bid information must be maintained on a separate computer system to which no employee of the self-build team has access**

HREA Response: Yes, this measure should be required

- (e) Any requests for clarification of the RFP be in writing, with the request and the utility's response immediately posted to the RFP website and served by email on every other party that has indicated an interest in responding to the RFP.**

HREA Response: Yes, this measure should be required

- (f) A company officer must have explicit, written authority and obligation to enforce the code of conduct. Such officer shall certify, by affidavit, Code compliance by all employees.**

HREA Response: Yes, this measure should be required

**3. Utility affiliate participation**

- a. Assume the Commission will not require the utility to use an affiliate for the utility's self-build obligation. These questions explore the extent to which a utility affiliate may participate in the bidding as a third-party competitor.**

HREA Response:

HREA understands that if an affiliate is created, it will be a separate entity that cannot satisfy any obligation imposed by the Commission for the utility to offer a self-build bid, backstop proposal, benchmark proposal, parallel plan or contingency plan.

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- b. What are the limits, if any, on the Commission's authority to permit, prohibit or condition a utility affiliate's participation in a competitive bid?**

HREA Response:

HREA does not take a position on the legal aspect of this question. Nevertheless, HREA recommends that the Commission, in general, not prohibit any utility affiliate's participation, especially given that the utility would probably only form the affiliate in order for it to participate in the RFP process, thereby keeping ownership and operation of the generation in "friendly" hands, even if not in rate base. HREA recommends that the utility itself be required to advance its best and most preferred next generation resource publicly, as the option for competitive bidders to beat, as the backstop (benchmark) for each RFP. Competing proposals can then be submitted by third parties, among them a utility affiliate.

- c. Assume the Commission has legal authority to permit, prohibit or condition a utility affiliate's participation.**

HREA Response: OK.

- d. Should the Commission permit a utility affiliate to bid?**

HREA Response: See our response in sub-paragraph b. (above).

- e. Assume the Commission will permit a utility affiliate to bid, provided there is a code of conduct. What elements should the code contain?**

HREA Response:

HREA believes the same code of conduct should apply as in the case described above regarding a utility self-bid project (see sub-paragraph III.A.2.d.), except that because the affiliate will be separately incorporated, separately capitalized, and separately staffed, it should have its own business premises, computer system, accounting system, etc.

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- f. What changes are necessary, in the relationship between the affiliate and the HECO utilities, to make the relationship arm's-length?**

HREA Response:

HREA recommends that the companies be totally separated, which should always be the case between a regulated-entity and a un-regulated entity under the same holding company, such as Hawaii Electric Industries. For example, besides total physical separation of office and other building, facilities and staff, both entities' Boards of Directors should have no common directors or officers.

**4. Access to generating sites**

- a. Where the Commission has determined that a particular site has unique attributes that are competitively significant, such that denial of bidder access will impede effective competition, should the Commission require the utility to make its undeveloped generation sites available to bidders?**

HREA Response: Yes

- b. Assume the Commission requires the utility to make its undeveloped generation sites available to bidders.**

**(1) Should the price be book cost or market value?**

HREA Response:

HREA believes the site is usually deemed to "belong" to ratepayers, so it is likely be sold at the higher of book or market. However, in some cases, HECO might only want to lease the site, if it has other generation units in or on the site that it needs to maintain access to, etc.

- (2) If market value, assume the Commission finds that negotiations between the utility and the bidder will not be productive due to the utility's control of a competitively significant site. What will be the most efficient process for determining the price?**

HREA Response:

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HREA recommends that the Commission conduct a survey to determine market value for purchase or lease of the site.

**(3) If market value, what should be done with the gain if market value exceeds book?**

HREA Response:

HREA recommends that the excess value be returned to the ratepayers.

**(4) What actions should the Commission take to minimize or eliminate the following problems?**

**(a) reduction in the utility's ability to carry out parallel planning**

HREA Response:

HREA observes that the utility's parallel plan could still include development of the utility's site. For example, the sale or lease of the site could be included in the PPA, made conditional upon achievement of the milestone after which parallel planning would be abandoned.

**(b) risk that the utility would incur liability risk associated with the bidder's option**

HREA Response:

HREA believe any liability risks associated with an IPP purchase or lease of utility-owned site should be identified, and incorporated, as appropriate in the PPA. For example, contractual provisions in the PPA could indemnify the utility for any devaluation of the site, environmental hazards, or other liabilities resulting from the use of the land by the winning third-party bidder, until such time as the conditions on transfer of site ownership in the PPA (achievement of the appropriate milestone) have been satisfied. If appropriate, these provisions could be backed up by requiring the winning bidder to take out a performance bond.

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**(c) other**

HREA Response: HREA has not further comments on this question.

**(5) Should competitive bidding of utility sites be limited to turnkey projects?**

HREA Response: No.

**5. Access to transmission**

- a. Should the Commission require a written policy on procedures for interconnection and transmission upgrades, to ensure comparable treatment among bidders, and between independent bidders and the utility's self-build option?**

HREA Response: Yes.

- b. Assume the Commission will require a written policy on procedures for interconnection and transmission upgrades, to ensure comparable treatment among bidders, and between independent bidders and the utility's self-build option. What elements should the policy contain? Consider:**

- (1) advance identification of zones reflecting different levels of interconnection cost and transmission upgrade cost**

HREA Response:

Yes, to the extent practical. At a very minimum, the RFP for a particular increment of new generation should contain the information for the relevant areas where new generation can be expected to be installed. Further, the information on interconnection costs and transmission upgrade costs should be produced on request to potential bidders proposing interconnection at unexpected areas or zones that might nevertheless satisfy the needs in the RFP.

- (2) a formal queuing process that ensures nondiscriminatory treatment of all requests for interconnection, upgrades and studies thereof**

HREA Response: Yes. The queuing process would generally be expected to apply outside the utility's solicitation for competitive bids for new generation, however.

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**(3) a means of minimizing the cost of studies by bundling different requests into a single study**

HREA Response: Yes.

**(4) information about capacity, operations, maintenance and expansion plans relating to the transmission and distribution system**

HREA Response:

Yes. This information should be shared during the IRP process and as the plans develop, potentially on a portion of the utility's website dedicated to bidder communications. The Commission could also amend its requirements for the adequacy of supply report and require utilities to make the information available there, and also require the utilities to post their tariffs, adequacy of supply reports, and IRP filings on their websites.

**(5) other**

HREA Response: HREA has no further comments on this question.

**c. What form should the Commission's requirement take? Consider:**

HREA believes that the Commission should act in its decision in **this docket** to fashion guidance and requirements that will facilitate full and fair competitive bidding for new generation at the earliest time, especially considering that competitive bidding for new generation has been under consideration since 1996, both in this docket and its predecessor, Docket No. 96-0493. The Commission's decision in this docket could take the form of establishing presumptions concerning the prudence of utility procurement of new generation costing in excess of an established threshold value, and the competitive bidding procedures the utility should follow in order to establish, prima facie, that its proposed expenditure of funds is prudent and should be authorized by the Commission.

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To implement other aspects of this decision, HREA believes the Commission should order the utilities to make conforming changes to their tariffs (e.g., adopting Codes of Conduct and Standards of Dealing if the utility or its affiliate is going to be allowed to bid, rather than submitting a backstop proposal, modifying interconnection standards, etc). The Commission should then issue public notice of those filings in a new docket so that other potential bidders will have an opportunity to intervene and comment, before ruling on the proposed tariffs.

#### **(1) Commission-issued rules**

HREA Response:

HREA believes the Commission could either issue rules, guidelines, or a policy statement on electric utility procurement policies and procedures. In addition, the Commission could modify its current reporting requirements for electric utilities to require additional information or new compliance reports. The Commission could also issue amendments to the current IRP Framework to accommodate the types of information that should be shared with third parties potentially interested in furnishing new generation, greater involvement by the Commission earlier in the IRP process, and other aspects of the new competitive bidding framework.

#### **(2) utility tariff**

HREA Response: Maybe.

#### **(3) Commission-issued framework**

HREA Response: No

#### **(4) other**

HREA Response:

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HREA believes this type of information should be shared generally during the IRP process, it should be shared as part of the RFP, and should be included in ordinary Commission reporting requirements, and tariffs, reports, and IRP documents should all be posted on the utilities' websites.

- d. Should interconnection costs (costs necessary to interconnect the generator with the utility's transmission system) be assigned directly to the generator, and therefore not affect cost comparisons among the bids?**

HREA Response:

Yes.

HREA notes that bidders will have to estimate these costs in order to prepare a bid-in electricity price. HREA would also like to note the interconnection facilities built and paid for by the winning bidder should be the property of the winning bidder, e.g., IPPs should not be required to pay for interconnection infrastructure and then "gift" the infrastructure to the utility.

- e. What treatment should the Commission require for transmission upgrade costs? Consider these possibilities:**

**(1) the upgrade would never have been built for utility system purposes, and**

**(a) provides no cost or reliability benefit to the utility's customers**

HREA Response:

In this case, HREA recommends that the IPP pay for the transmission system upgrade.

**(b) does provide cost or reliability benefit to the utility's customers**

HREA Response:

In this case, HREA recommends that the utility pay for the transmission system upgrade, or if an argument can be made that such upgrade would occur earlier than needed, perhaps the IPP and utility could share the costs of the transmission upgrade in proportion to the benefits derived.

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**(2) upgrade would have been built for utility system purposes, five years later than the IPP in-service date; and, during the five-year wait --**

**(a) provides no cost or reliability benefit to the utility's customers**

HREA Response:

HREA observes that this case is not realistic. Specifically, the addition of new generation will enhance system reliability. Therefore, HREA recommends that the IPP and utility share the costs of the transmission upgrade in proportion to the benefits derived. For example, if the transmission upgrade is designed to handle way more than the additional amount required by the new power plant, then the utility should share the cost in proportion to the capacity above that required by the new power plant.

**(b) does provide cost or reliability benefit to the utility's customers**

HREA Response:

In this case, HREA recommends the IPP and utility share the costs of the transmission upgrade, where the utility's share is greater than the IPP's.

**f. What measures should the Commission employ to ensure that the utility does not discriminate against IPPs in carrying out transmission studies and allocating transmission upgrade costs?**

**(1) Should the interconnection and transmission studies involving IPPs be --**

**(a) performed by an independent entity and**

HREA Response:

No. The utility should defend its allocations of costs, first to the IPP, and if they don't agree, the Commission could intervene. In turn, the IPP could decide whether to commission a private entity to do an independent evaluation.

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**(b) be approved by the Commission?**

HREA Response: Yes

**(2) If the utility does the study, should the study be --**

**(a) evaluated by an independent entity and**

HREA Response:

This may not be necessary if the IPP has a right to comment on the results of the study.

**(b) approved by the Commission?**

HREA Response: Yes

**B. Independent Entity Roles**

**1. When is an independent entity necessary?**

HREA Response:

HREA assumes, for the purpose of this section, that the independent entity is an independent observer (IO), as opposed to the independent entity discussed in the previous section (sub-paragraph III.A.5.f.).

**a. when the utility presents a self-build option?**

HREA Response:

HREA assumes, for the purpose of this section, that a "self-build" option is a project or proposal that the utility is advancing via a competitive bid to meet an identified system need (in or out of IRP). Referencing page 12 our Final Statement of Position (FSOP), HREA does not support the self-build option. Notwithstanding our position, in the case that the Commission authorizes this option, HREA believes the role of the IO is extremely important. On page 14 of our FSOP, we discussed the role of the IO for the case that a utility-affiliate is

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planning to submit a bid. The proposed role of the IO is as follows (reference footnote 11 on page 14 of our FSOP):

"The IO would be hired and paid by the PUC. The IO would assist the PUC during all phases of planning for and acquiring new resources. The primary role of the IO is to make sure that the utility does not unduly prefer its own affiliate, and also make sure the utility does not unnecessarily prefer the most conventional, easy-to-maintain or handle, technology."

HREA believes that this role of the IO, in the case of the utility self-build, will serve, at best, to reduce, but not eliminate, the perception of utility self-dealing.

**Question: when, if ever, would the utility not present a self-build option?**

HREA Response:

HREA does not support, as noted above and in our FSOP, the utility self-build option, in which case, the utility would never present a self-build option. Instead, HREA proposes that the utility would, as part of its parallel planning activity, prepare a backstop proposal. HREA observes that there would be times when the backstop proposal would not be required, e.g., when the utility determines that the market can meet the requested system need in a specific RFP.

**b. when a utility affiliate is bidding?**

HREA Response:

See our response above to sub-paragraph III.B.1.a.

**2. What roles should the independent entity have? Consider:**

**a. administrative roles**

**(1) manage the correspondence between the utility and bidders**

HREA Response: Yes.

**(2) other**

HREA Response: Yes.

**b. advisory roles**

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- (1) certify to the Commission that each of the following utility proposals was based on a fair process and will promote fair decision making:**

HREA Response:

Our response to each of the items (a) to (i) below is "yes:"

- (a) pre-qualification criteria**
- (b) IRP**
- (c) RFP**
- (d) model PPA to be attached to the RFP**
- (e) code of conduct**
- (f) self-build bid to be included with the RFP**
- (g) selection criteria**
- (h) final decision to purchase power or proceed with self-build option**
- (i) other**

- (2) advise the utility on the fairness of utility decision making during, and with respect to, each of the utility actions listed in the preceding question**

HREA Response: Yes.

- (3) advise the Commission on the fairness of utility decision making during, and with respect to, each of the utility actions listed in the second preceding question**

HREA Response: Yes.

- (4) resolve disputes that arise during --**

- (a) the procurement process**

HREA Response: Yes.

- (b) post-selection negotiations**

HREA Response: Yes.

- (5) report violations of any procurement rules**

HREA Response: Yes.

- (6) after the procurement decision, provide the Commission with --**

- (a) an overall assessment of whether the goals of the RFP were achieved, including solicitation of sufficient competitive bids were received and the results of the RFP were unbiased; and**

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HREA Response: Yes.

**(b) recommendations for improving future competitive bidding processes**

HREA Response: Yes.

**(7) Question: Is an independent entity certification a certification of fairness only, or is it also a certification of prudence?**

HREA Response:

HREA believes it could be both, for example, if the Commission hires the independent entity (or IO) and includes both tasks in its scope of work with the IO. However, HREA is not sure whether a certification of fairness and/or prudence are tasks that the Commission could delegate. If so, in lieu of a certification, HREA recommends that the independent entity provide the Commission with comments regarding the issues of fairness and prudence.

**c. decision making roles**

HREA Response:

HREA's view is that the independent entity would not have a decision making role. Instead, role of the independent entity should be advisory only. Thus, HREA's response to items (1) to (5) below is "no."

**(1) disqualify bidders**

**(2) require rebidding where there are flaws in the procurement process**

**(3) amend a particular stage of the procurement process to cure flaws**

**(4) determine bid evaluation criteria**

**(5) decide disputes**

**3. Who should select the independent entity, and by what process? Consider:**

**a. Commission approves list of candidates, utility selects from the list**

HREA Response:

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HREA supports this approach in the case that there is not a utility self-build proposal.

**b. Utility presents approved list of candidates, Commission selects from the list**

HREA Response:

HREA does not support this approach. In the case that Commission is selecting the independent entity, HREA recommends that the utility provide comments on the list of candidates under consideration by the Commission.

**c. Utility and Commission jointly create list of candidates (list created by each proposing a list from which the other may delete names); then --**

- (1) utility selects from the list**
- (2) Commission selects from the list, or**
- (3) both utility and Commission approve selection**

HREA Response:

HREA does not support any of the options (1) to (3) in this proposed approach.

**4. To whom should the independent entity be contractually accountable -- Commission, utility or both?**

**a. Commission**

HREA Response:

HREA supports this approach when either a utility affiliate is advancing a proposal, or in the case the Commission authorizes the utility to advance its self-build proposal.

**b. utility**

HREA Response:

HREA supports this approach in the case that neither the utility nor any affiliate is advancing a proposal.

**c. both**

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HREA Response:

HREA does not support this approach.

**5. Who should pay the costs of the independent entity? Consider:**

**a. Commission, with costs recovered from the utility who then recovers costs from ratepayers**

HREA Response:

HREA supports this approach when either a utility affiliate is advancing a proposal, or in the case the Commission authorizes the utility to advance its self-build proposal. However, HREA suggests perhaps the Commission should recover their costs directly from the Commission's special fund.

**b. Utility, who then recovers costs from ratepayers**

HREA Response:

HREA supports this approach in the case that neither the utility nor any affiliate is advancing a proposal.

**c. Other**

HREA Response:

HREA is aware of other commissions which designate: (1) certain staff as non-decisional in a particular docket, or (2) administrative law judges that are not sitting in an adjudicatory capacity in the proceeding in question, to act as overseers, alternative dispute resolution specialists, or in other capacities to make recommendations to the decisional authorities. Sometimes these PUC personnel have gone through specialized training to better equip them to serve in these capacities.

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**C. Commission Roles**

**1. Which if any of the following roles should the Commission play?**

**a. approve utility proposals on --**

HREA Response:

HREA's response to each of the items (1) to (8) below is "yes" as amended:

- (1) pre-qualification criteria**
- (2) IRP**
- (3) RFP**
- (4) model PPA to be attached to RFP**
- (5) utility backstop proposal to be attached to RFP (if appropriate)**
- (6) utility self-build proposal (if appropriate)**
- (7) code of conduct**
- (8) selection criteria**
- (9) final decision to purchase power from a specific seller or proceed with self-build option**

**b. resolve disputes that arise during --**

**(1) the procurement process**

HREA Response:

HREA recommends that the Commission resolve any disputes in the procurement process with the assistance of the independent entity.

**(2) post-selection negotiations**

HREA Response:

HREA recommends that the Commission resolve any disputes in the post-selection negotiations with the assistance of the independent entity.

**c. other**

HREA Response:

HREA recommends that the Commission resolve any disputes that arise during the post-Commission approval process, e.g, during construction and operation of an approved facility.

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- 2. Assume that the Commission should issue an order determining whether the utility has complied with the competitive procurement procedures. When should such an order be issued? Consider:**

- a. in the proceeding to approve the PPA, pursuant to the terms of the PPA, HRS § 269-27.2, HAR ch. 6-74, and HAR § 6-60-6(2), to the extent applicable?**

HREA Response:

Yes, assuming that the utility would come to the Commission in a request to commit funds in excess an agreed upon dollar threshold, under GO7, in which the final, signed PPA would be submitted for approval. HREA believes that this is the proceeding in which the Commission would determine whether any necessary competitive procurement requirements had been met, or any guidelines for establishing prudence had been satisfied. The Commission may or may not decide to condition its finding of prudence, subject to revisiting in the next rate case, depending on the circumstances.

- b. in a general rate case, pursuant to HRS § 269-16?**

HREA Response: No.

- c. in an energy cost adjustment clause case, pursuant to HAR § 6-60-6(2) and HRS § 269-16(b)?**

HREA Response: No.

- d. in a proceeding separate from each of the preceding three options?**

HREA Response: No.

**D. Utility Cost Recovery of Wholesale Purchase Costs and Utility Self-Build Costs**

- 1. Does Commission approval of a PPA preclude the Commission from making later disallowances due to:**

- a. imprudent negotiation of the PPA**

HREA Response:

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No, depending on how the Commission may have conditioned the approval order, but generally HREA believes the negotiation of the PPA would be reviewed under the standard of a reasonable utility with the knowledge it had at the time, and not via the clear sight of hindsight.

**b. imprudent management of the PPA**

HREA Response: No.

**c. failure to enforce certain rights under the PPA?**

HREA Response: No.

**2. Recovery of utility parallel planning costs**

**a. Who should pay for the utility's parallel planning costs? Consider:**

**(1) utility ratepayers**

HREA Response: Yes.

**(2) all bidders**

HREA Response: No

**(3) winning bidders**

HREA Response: No

**(4) some combination of the foregoing**

HREA Response: No

**b. By what mechanism should cost recovery occur?**

HREA Response:

Reference our response to sub-paragraph II.A.3.3 (1), HREA recommends cost recovery of utility parallel planning costs in IRP.

**3. Competitive effects of different cost recovery treatments**

- a. Where the utility selects its self-build option in a competitive bidding scenario: Should the Commission require the utility to absorb the risk that its actual cost will exceed the price associated with its self-build option?**

HREA Response:

Yes. Reference our response to sub-paragraph II.A.2.b. (1), HREA believes the utility should absorb any project cost overruns associated with its self-build option. Specifically, the overruns should be paid by the shareholders, not the ratepayers.

- b. Assume the answer is yes. What are the mechanics, in terms of bid submission and later ratemaking, necessary to achieve this result?**

HREA Response:

The order approving the GO7 application to commit funds would say up to and including "x"—the amount of the winning bid of the utility, not including any additional amount for contingencies or overruns, and order the utility to submit a project accounting for actual costs and costs for which they are seeking recovery in the rate case(s) in which that recovery is sought.

- c. Should there be any exceptions to this rule?**

HREA Response: No.

#### **IV. Assure Proper Comparisons of Competing Bids**

##### **A. Debt Equivalency Treatment of Long-Term PPAs**

###### **1. When is debt equivalency triggered?**

###### **a. To what extent does debt equivalency depend on contract terms? Consider:**

###### **(1) contract shifts operating risks to the IPP**

HREA Response: HREA does not believe it to be a factor.

###### **(2) contract shifts fuel risks to the IPP**

HREA Response:

HREA does not believe it to be a factor, as long as the IPP is treated the same way as the utility with respect to fuels costs. Specifically, if the utility is allowed to pass all of its fuel costs on to the ratepayer, the IPP should be allowed to do the same.

###### **(3) contract gives utility right to own project on default**

HREA Response: HREA does not believe it to be a factor.

###### **(4) other terms**

HREA Response:

Debt equivalency (or legal obligation) can depend on three treatments by the financial community: imputed debt, capital lease and consolidation.

- (i) Imputed Debt. Fixed obligations on a PPA, such as capacity payment, can be treated as an imputed debt by the financial community. A credit rating agency, such as Standard & Poor's, can impute a debt equivalent to 15% to 30% of the present value of the minimum fixed payments (transcript, pg. 847, lines 7-18). This in turn can result in a credit downgrade, unless the utility takes steps to stabilize or improve its debt-to-equity ratio;

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(ii) Capital Lease. A legal obligation can also be created if a PPA is treated not as a contract, but as a capital lease (transcript, pg. 863, lines 18-23). If so, the capital lease is recorded as an obligation on the utility's balance sheet. HREA notes that most PPAs could be treated as capital leases (see detailed criteria, transcript, line 16, page 880 to line 13, page 882); and

(iii) Consolidation. Consolidation is the case where the IPP's facility is included as an asset on the utility's balance sheet (transcript, pg. 863, lines 18-23. PPAs with variable interest entities (VIE) would trigger consolidation, if the utility is the primary beneficiary of the VIE (transcript pg. 870, lines 1-4). In most cases, IPPs are VIEs, but the utility would not necessarily be the primary beneficiary. The primary beneficiary is a "party that absorbs the majority of the entity's expected losses or receives a majority of its expected residual returns" (transcript, pg. 872, lines 14-17).

**b. To what extent does debt equivalency depend on --**

**(1) the size of a specific contract?**

HREA Response:

HREA believes the size of a specific contract (facility) could be a factor, in so far as the larger the potential imputed debt or other legal obligation could be, the greater the potential impact on the balance sheet and the ability of the utility to attract capital, and the larger impact to the ratepayer.

**(2) the utility's total PPA obligations?**

HREA Response:

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HREA believes it could be a factor, given the uncertainty of future actions the financial community might take.

**(3) the length of the contract?**

HREA Response:

HREA believes this can be a factor, e.g., the length of contract is one factor that can trigger a project being considered a capital lease, in addition to other factors, such as whether the PPA includes fixed payments, such as for firm capacity.

**2. Comparability between PPA and self-build**

**a. What are the specific differences between the debt equivalency effects of a PPA and the utility's self-build option, given that the utility finances its self-build option with debt in part?**

HREA Response:

HREA believes the financial community should be evaluating the risk of utility self-build projects with those of IPPs as it evaluates and assigns credit ratings to the utilities. At the moment, it appears that the financial community does not compare the risk of a utility self-build project with that of an IPP. If the financial community, in fact does, then one could conclude that the financial community sees IPP projects as 30% riskier than utility self-build projects. If so, we would like to see their justification for that assessment.

**b. When comparing a proposed PPA with the utility's self-build option, how should the utility take into account the similarities and differences between the capital structure effects of each?**

HREA Response:

HREA recommends that the utility conduct a preliminary analysis before the release of a RFP to assess whether there could be issues regarding imputed debt, a capital lease or consolidation. Then, if warranted, the utility should

Exhibit A  
HREA Response to the Commission's Post-Hearing Questions

propose a bidding criterion that quantifies the balance sheet impact of a third-party proposal over the utility's own backstop proposal, and explain how this criterion was derived. This criterion should be submitted to the Commission for review, with explanation and justification, along with other bid ranking criteria.

**3. What technical methods should the Commission require for translating applying debt equivalency analysis to specific IPP offers and utility self-build options?**

**Consider:**

**a. Commission-specified percentage debt figures (e.g., 10%)**

HREA Response:

HREA recommends that the Commission give this approach serious consideration.

**b. Commission-specified sliding scale with pre-defined minimum and maximum figures**

HREA Response:

While HREA prefers the approach above in "a," a sliding scale should also be considered.

**c. utility internal analysis followed by Commission review**

HREA Response:

As noted in our response to sub-paragraph IV.A.2.6., HREA supports this approach. HREA also observes that approach "a" could be a logical result of implementing approach "c."

**4. In HECO's pending case, the company and the CA differed by about \$20 million on the return on equity issue, but ultimately settled this issue. Hypothetically speaking, under what circumstances would a PPA's cost-of-equity effect be sufficiently small to "get lost in the noise"?**

HREA Response:

Exhibit A

HREA Response to the Commission's Post-Hearing Questions

HREA is not certain that a PPA's cost-of-equity effect would be sufficiently small to "get lost in the noise," but the Commission could solicit the recommendation of any IO and the Consumer Advocate in any case where this might be an issue.

**B. Other Considerations**

**1. What requirements should the Commission establish concerning evaluation of each of the following considerations?**

**a. Reliability considerations**

- (1) Credit rating: Should the Commission establish credit rating cutoffs, whereby IPPs or developers with lower ratings are precluded from bidding at all?**

HREA Response: No

**(2) Track record**

- (a) Should the Commission establish experience prerequisites, whereby developers with insufficient experience are precluded from bidding at all?**

HREA Response:

In general, HREA believes bidders should be evaluated on their experience, but not excluded. For example, should a big engineering company with significant long-term experience in designing and building power plants, but none in renewable energy be excluded from bidding on a renewable RFP?

- (b) If the utility creates a new affiliate for purposes of bidding, will the new affiliate have zero experience for purposes of applying an experience screen?**

HREA Response:

Yes. This could certainly be true if the affiliate has never developed and operated a facility of the size and type sought in a RFP.

Exhibit A  
HREA Response to the Commission's Post-Hearing Questions

**(3) Development feasibility**

HREA Response: HREA supports each of items (a) to (h) as requirements for evaluation and scoring as amended:

- (a) siting status**
- (b) ability to finance**
- (c) environmental permitting capabilities and experience**
- (d) commercial operation date certainty**
- (e) engineering design**
- (f) fuel supply plan**
- (g) bidder experience**
- (h) reliability of the technology**

**(4) Operational viability**

HREA Response: HREA supports each of items (a) to (d) as requirements for evaluation and scoring as amended:

- (a) operation and maintenance plan**
- (b) financial plan and strength**
- (c) environmental compliance**
- (d) environmental impact**

**(5) Effects of total amounts of firm and as-available purchase power on utility's system**

HREA Response:

No. Specifically, the utility will have determined how much firm or as-available power as part of the RFP technical requirements. In the case of as-available projects, such as a windfarm, the amount of as-available purchase power on the utility system might affect the PPA and, therefore, whether the project can be financed.

**b. Operational flexibility**

HREA Response: HREA supports each of items (1) to (5) as requirements for evaluation and scoring:

Exhibit A  
HREA Response to the Commission's Post-Hearing Questions

- (1) dispatchability**
- (2) flexibility of maintenance schedules**
- (3) ramp rates**
- (4) quick start capability**
- (5) coordination of planned maintenance**

**c. Contract flexibility**

HREA Response: HREA supports each of items (1) to (4) as requirements for evaluation and scoring:

- (1) in-service date flexibility**
- (2) expansion capability**
- (3) contract term**
- (4) stability of the price proposal**

**d. Cost considerations**

HREA Response: HREA supports each of items (1) to (3) as requirements for evaluation and scoring:

- (1) Pricing path**
- (2) Post-contract benefits**
- (3) Willingness and ability of seller to accept financial risk**

**e. Other public interest considerations**

HREA Response: HREA supports each of items (1) to (6) as requirements for evaluation and scoring as amended:

- (1) net impact on the number of jobs created or lost**
- (2) net impact on the state's economy (increase or decrease in state gross product)**
- (3) net impact to the ratepayer (increase or decrease in rates and net bills)**
- (4) level of fossil emissions introduced or avoided to our atmosphere**
- (5) increase or reduction in the amount of imported fossil energy**
- (6) reduction in the exposure to fuel price volatility and supply**
- (7) contributions to state energy goals, such as RPS.**

Exhibit A  
HREA Response to the Commission's Post-Hearing Questions

**2. Methods of evaluating nonprice and price factors**

**a. Should the Commission require one or more methods for applying price and nonprice criteria? Consider:**

**(1) Nonprice criteria are threshold requirements, followed by evaluation on price only**

HREA Response:

No

**(2) Price only evaluation, w/ nonprice as a tie breaker**

HREA Response:

No

**(3) Actual scoring of each nonprice factor, combined with scoring of price factors**

HREA Response:

HREA prefers this method.

**b. If the Commission should not require one or more methods for applying price and nonprice criteria, who should develop these methods, and subject to what level of Commission review?**

HREA Response:

In the case that neither utility self-build nor utility affiliate proposals are advanced, HREA suggests that utility develop the methods for applying price and nonprice criteria with the assistance of an independent observer, subject to review and approval by the Commission.

Exhibit A  
HREA Response to the Commission's Post-Hearing Questions

- c. If turnkey proposals compete with non-turnkey proposals, how should the utility and the Commission value the additional benefits of the turnkey offering?**

HREA Response:

As noted previously, HREA does not support utility solicitation of turnkey projects [see our response to sub-paragraph II.B.1.e.(4)]. HREA is not certain what the additional benefits of a turnkey offering, proposed by a bidder, might be. In fact, HREA believes that turnkey projects that would be owned and operated by the incumbent utilities would merely result in additional generation market concentration and give the electric utilities even greater market power, which is an undesirable market structure in our view. However, HREA recommends that bidders be encouraged to provide details of the benefits that they believe a turnkey offering will provide to ratepayers.

End of Exhibit A

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing Post-Hearing Opening Brief upon the following parties by causing a copy hereof to be hand-delivered or mailed, postage prepaid, and properly addressed the number of copies noted below to each such party:

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Dated: June 6, 2006

  
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