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BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAI'I

In the Matter of)
)
PUBLIC UTILITIES COMMISSION)
)
Instituting a Proceeding to)
Investigate Competitive Bidding)
for New Generating Capacity in)
Hawai'i.)
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Docket No. 03-0372

COUNTY OF KAUA'I'S RESPONSES TO
THE PUBLIC UTILITIES COMMISSION'S
INFORMATION REQUESTS

AND

CERTIFICATE OF SERVICE

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PUBLIC UTILITIES
COMMISSION

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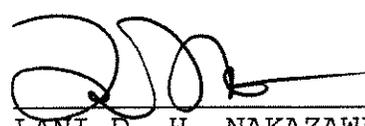
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COUNTY OF KAUA`I`S RESPONSES TO
THE PUBLIC UTILITIES COMMISSION`S
INFORMATION REQUESTS

The County of Kaua`i (County or County of Kaua`i) submits its responses to the Public Utilities Commission`s (PUC`s or Commission`s) information requests (IRs) in this docket. All responses are sponsored by Glenn Sato, the County`s Energy Coordinator.

Dated: Līhu`e, Kaua`i, Hawai`i, June 9, 2005.



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CHRISTIANE L. NAKEA-TRESLER
Attorneys for the County of Kaua`i

PUC-IR-3 (All Parties) Ref: HECO SOP, Exhibit A at 4;
HREA-HECO-IR-9.

These references address the potential for an increased reliability risk as a result of the implementation of competitive bidding and purchased power. Please elaborate on the solutions to this potential problem, and specifically identify potential mitigating factors that can be incorporated into the competitive bid process.

RESPONSE:

HECO SOP, Exhibit A, discusses the risk of project default and/or failure of the independent generator to deliver the power. If the IR concerns default to build a project, this can be mitigated by requiring the developer to take out a performance bond to guarantee the completion of the project.

The competitive bidding process is not the reason for increased reliability risk. This risk exists now without any mandated or voluntary competitive bidding process.

PUC-IR-10 (All Parties)

If the Commission requires competitive bidding, what would be the disadvantages of requiring independent competitors to limit their participation to turnkey projects, at least initially, so that the utility would have maximum control over the project operations upon construction?

RESPONSE:

The disadvantage of limiting participation of independent competitors to turnkey projects is a reduction in options currently available, such as power purchase agreements for generation from independent power producers.

PUC-IR-12 Ref: HECO-HREA-IR-5(b)(2) at 6 states:

For example, would the failure to meet predicted system availability become a basis for a penalty? We are not aware of case where this has been done elsewhere. Also, if the utility is not going to be subjected to a penalty, which is the current case with our RPS law, why should the windfarm owner/operator?

- a. **(HREA)** Please clarify what the "penalty" would be for, as the term is applied to the utility performance under the RPS law. Is this "penalty" associated with the system availability or reliability provided by the utility?

RESPONSE: NA.

- b. **(All Parties)** What type of provisions can be reasonably incorporated into as-available contracts to encourage the IPP to improve on system availability and/or reliability?

RESPONSE:

One suggestion may be to structure incentives tied to achieving levels of system availability and/or reliability, together with disincentives for failing to meet minimum availability and reliability objectives.

PUC-IR-18 (All parties, except HREA) Ref: HECO-HREA-IR-12 at 15 states:

[Ratepayers]...will bear the risk related to...failure to obtain appropriate authorizations...

- a. Who should bear the risk and associated costs of a winning bidder's failure to obtain appropriate authorizations within a specified time period - the utility, the winning bidder or ratepayers?

RESPONSE:

The winning bidder should bear the risk for failure to obtain appropriate authorization within a specified time period, especially if the failure was caused by the bidder, or if the delay could have been reasonably predicted, given Hawai'i's current land use and regulatory environment. The responsibility of unanticipated delays could be borne by the utility and its ratepayers (or, in the case of KIUC, its member/owners) or the winning bidder could be required to share the delay costs. However, a requirement to share in delay costs could cause higher bid prices, as bidders might incorporate the cost of shared risk into bids. To minimize delay risk, the competitive bidding process should incorporate safeguards. We have suggested performance or completion bonds as one possibility. In addition, bid evaluation factors should include an assessment of the

bidder's past performance and ability to perform within the time allowed.

- b. What mechanisms, if any, are available to guard against the risk of delays arising out of inabilities to obtain permits or other authorizations?

RESPONSE:

The winning bidder should be required to act consistently with the best practices of developers or other permit applicants in the jurisdiction. The bidder should be required to file permit applications on time and utilize proactive measures such as public outreach at all phases of the process.

PUR-IR-19 (All Parties) Ref: CA SOP at 60.

...an electric utility must be prepared with a "backstop" plan (i.e., the specific resources that the utility would develop and put into rate base if necessary to meet its service obligations. The backstop plan may be satisfied by the utility's resource proposals.

If a utility has a "backstop" plan that can be satisfied by its resource proposal, does this mean that it is always effectively competing with other bidders?

RESPONSE: No.

PUC-IR-23 (All Parties)

What measures can and should be taken to avoid self-dealing or an unfair competitive advantage over other bidders (or even the appearance of such)?

RESPONSE:

In the government bidding process there are safeguards to prevent self-dealing or having one party achieve an unfair competitive advantage over other bidders. The specifications of the bidding document must allow all parties to have a level playing field. For example, if a portion of the bid requires a proprietary technology, that specific requirement will probably lock out competition. The key is to develop a general description of the requirements and have the vendors try to fill that. The use of a specific name brand or proprietary technology should be justified and approved by the Commission. We agree with CA SOP at 59 which outlines four principles which the solicitation should follow.

- Transparency: the competitive solicitation should be open and fair.

- Definition: the product or products sought through the competitive solicitation should be precisely defined.
- Evaluation: evaluation criteria should be standardized and applied equally to all bids and bidders.
- Oversight: an independent third party should design the solicitation, administer bidding, and evaluate bids and evaluate bids prior to the company's selection.

PUR-IR-24 (All Parties)

What is the desirable outcome of this proceeding -- a specific competitive bidding procedure, a specific change to the IRP process, a specific model RFP, a specific model PPA, or anything else?

RESPONSE:

The County of Kaua'i would like to see a specific competitive bidding procedure evolve from this proceeding under commission oversight, review and approval. The County also supports changes to the IRP process, model RFPs and PPAs, and other regulatory requirements, if necessary to implement the competitive bidding procedure.

The County also supports changes to utility practices which may influence the feasibility of renewables. These have been the subject of some discussion in prior dockets before the Commission, and include revisions to utility system operation models and economic models to accurately and adequately model and evaluate renewables, county renewable wheeling, and changes to modeling conventions and generation expansion criteria that are sensitive to the contribution of as-available generation.

PUC-IR-25 (All Parties) Ref: HECO SOP at 12; CA-HECO-IR-6; HREA-HECO-IR-14.

- a. Should the competitive bidding process be of a "framework" nature, i.e. a set of guidelines in the form of an enforceable Commission order (which would involve an evidentiary hearing to test the recommendations of the various parties to the proceeding)?

RESPONSE: Yes.

- b. If the answer to (a) is "yes", then if the Commission does decide to initiate a proceeding to develop the competitive bidding "framework", should it hold public hearings, workshops and/or panel format hearings?

RESPONSE: Yes.

- c. If the answer to (a) is "no", then should the competitive bidding process be established through a rulemaking proceeding (which would necessitate public hearings and comments)?

RESPONSE: NA.

PUC-IR-26 (All Parties except CA) Ref: CA SOP at 4; HECO-CA-IR-4.

- a. As advocated by the Consumer Advocate, should each utility be allowed to design its own competitive bidding process according to current "best practices," subject to commission approval?

RESPONSE:

Yes, each utility should be allowed to design its own competitive bidding process according to current "best practices" but no practices should be allowed without Commission review and approval. "Best practices" should be defined, justified and explained in detail and approved by the Commission, and interested parties should be allowed the opportunity to provide input to the Commission.

- b. How should "best practices" be determined?

RESPONSE:

"Best practices" for each utility should be determined, and explained and justified by the utility for approval by the Commission.

- c. Should the Commission provide guidelines to the utilities regarding what it considers to be current "best practices"?

RESPONSE:

Yes, the Commission should provide guidelines, but also require the utilities to submit their "best practices" for review and approval by the Commission.

PUC-IR-27 (All Parties) HECO SOP, Exhibit A at 34 states:

... the development of competitive bidding rules and guidelines should be developed from the ground up without superimposing another state's system directly in Hawaii.

Is HECO aware of any state system that could profitably be used as a starting point for developing Hawaii's competitive bidding rules or guidelines, in order to reduce the cost and time required to develop them from the ground up? What aspects of such state's approach are particularly helpful?

RESPONSE:

This IR seems to be for HECO. If the question is for all parties, we are not aware of any state system that could profitably be used as a starting point to develop Hawaii's competitive bidding rules or guidelines.

PUC-IR-29 (All Parties except HREA) Ref: HREA SOP at 11-12;
HREA-HECO-IR-11; HREA-KIUC-IR-1.

Please comment on the competitive bidding models offered by HREA, where the utility would identify the site, capacity, and (possibly) fuel type, then prepare and submit a "facility bidding baseline" to an independent contractor who would solicit and review bids against the utility's baseline.

RESPONSE:

The County of Kaua'i is not sufficiently familiar with the concept of "facility bidding baseline" proposed by HREA to provide comments.

PUC-IR-31 (All Parties except KIUC) Ref: HREA-KIUC-IR-1.

- a. Should the competitive bidding process be different for an IOU than for a co-op?

RESPONSE:

A Hawaii-specific competitive bidding process that satisfies the generation and transmission objectives in the respective utilities' IRP plans should not require different bidding processes for an IOU versus a co-op. However, KIUC has indicated (KIUC SOP at 4) that RUS will have some type of review and approval process for the solicitation when a RUS loan or loan guarantee is involved. This may or may not impact the competitive bidding process for an IOU versus a co-op.

- b. Please comment on KIUC's contentions that competitive bidding should be used by it only when KIUC initiates the process and has sole authority for key project decisions.

RESPONSE:

As the procurer, KIUC should initiate the process, however it should be required to make decisions on key project issues consistent with Commission-established guidelines and all its ultimate project decisions must be contingent on Commission review and final approval.

- c. Please comment on KIUC's contentions that its Board of Directors "provides the same oversight and risk mitigation for its members as would an ICA [independent contracting agent] for ratepayers of an investor-owned utility."

RESPONSE:

With due respect to KIUC's board, its elected members do not, and should not, be expected to have the same expertise as an ICA. If the ICA review encompasses technical interpretations and judgments to determine risk mitigation, then the expertise and technical skill level of the board of directors may not equal that of an ICA hired specifically for technical knowledge and experience. The board of directors is conceptually a reflection of the general membership. While board members should have a general understanding of KIUC operations, they cannot be reasonably expected to have the technical expertise described above. In addition, the board goes through an election annually where a third of the sitting directors may be replaced by inexperienced members who require time and training to be brought up to a level of sufficient knowledge to effectively participate in any meaningful technical oversight capacity. Having said this, the ICA definition and description of duties as provided by HREA requires greater definition in order for the County to comment in more detail.

PUR-IR-37 (All Parties except CA) Ref: e.g., CA SOP at 51-54.

Can a competitive bidding program succeed in the absence of the changes proposed by the CA to the IRP Process?

RESPONSE: Yes.

PUC-IR-39 (All Parties)

- a. Should the competitive bidding process be an "open" bidding process, wherein the utility or the commission develops self-scoring criteria and bidders know what the utility is seeking and how the bid will be evaluated?

RESPONSE:

Yes, definitely, the competitive bidding process should be an "open" process where the bidders know exactly what the utility is seeking and how the bid will be evaluated.

- b. Or should it be a "closed" bidding process, wherein the utility provides general guidance about planning objectives, but does not reveal all of the information about the evaluation process?

RESPONSE:

No, a "closed" bidding process that does not reveal all information about the evaluation process invites suspicion and is unfair to the companies submitting bids in good faith. A "closed" bidding process will result in very few bidders after the first few bids are issued, especially if one or two companies secure all of the initial contracts.

PUC-IR-40 (All Parties) Ref: CA-HECO-IR-7.

- a. Should competitive bidding be required for all transactions, required but subject to exceptions, or merely encouraged but not required?

RESPONSE:

Yes, competitive bidding should be required but subject to exceptions.

- b. If there are to be exceptions to a competitive bidding requirement, what should those exceptions be based on?

RESPONSE:

The exceptions should be for partially or wholly government-owned projects such as a waste-to-energy facility or landfill gas fired generation where one of the major partners is a government entity.

PUC-IR-41 (All Parties) Ref: HECO-HREA-IR-6.

- a. Should there be a "dollar threshold above which competitive bids would be required"?

RESPONSE:

It would be reasonable to assume a dollar threshold that is the same as the threshold now in place for commission approval of utility capital improvements (excess of \$2.5 million). There needs to be further discussion regarding the scope of a bidding requirement, i.e. whether it applies to new generation, generation additions, reactivating old generation, or all of the above.

- b. How should this dollar threshold be determined, and how often should it be reevaluated?

RESPONSE:

The threshold should follow the changes to the capital improvement threshold.

PUC-IR-42 (All Parties) Ref: CA-HECO-IR-7.

Should "near-term" needs be exempted from the competitive bidding process? If so, how should "near-term" be defined?

RESPONSE:

"Near term" needs should not be exempted. All needs should be subject to competitive bidding, except for the exemption noted above. An expedited or streamlined bidding process could be allowed by the Commission for projects with short lead times.

PUC-IR-44 (All Parties) Ref: CA-HECO-IR-9; HECO-HREA-IR-11.

Should the competitive bidding process differ depending on what type of resource is to be acquired (e.g., renewable resources, new technologies, and traditional resources; supply-side and demand-side resources, as-available v. firm capacity resources; and distributed resources)?

RESPONSE:

We do not foresee a need for the process to differ solely because of the type of resource. Our own experience with procurement leads us to believe that modifications may be required for other reasons or combinations of reasons, such as short lead times or emergency conditions, few interested or available bidders, and site constraints. The County cautions against crafting a bidding process that favors "inside the box" solutions. The bidding process should allow (or even favor) innovative bid responses that further the use of renewables.

PUR-IR-45 (All Parties)

Concerning relations between developers and utilities, what are the most likely areas of dispute, and what Commission involvement (e.g., rules upfront, vs. dispute resolution later) is best suited to minimize these disputes?

RESPONSE:

In our experience, rules upfront result in more accurate bid proposals and fewer disputes later.

PUC-IR-52 (All parties) Ref: CA SOP at 20.

Competitive bidding is one [mechanism for procurement]. The others include auctions, standard offers and selection through direct negotiations as well as approaches that combine elements of these mechanisms...

- a. Should the Commission consider mechanisms like auctions, standard offers and others identified by the CA as part of this competitive bidding docket?

RESPONSE:

The County has no experiences with these alternatives in the utility field, and has no comments at this time.

- b. Identify those situations where other methods such as standard offers or direct negotiations might be appropriate alternatives to competitive bidding.

RESPONSE:

The County has no experiences on which to base any opinion on whether other methods such as standard offers or direct negotiations might be appropriate alternatives to competitive bidding. In a government procurement scenario, direct negotiations or sole source procurement require substantial justification and must be approved by the chief procurement officer. If alternatives to competitive bidding are allowed, the Commission should require substantial information from the utilities and Commission approval should be required on a case-by-case basis prior to allowing or disallowing these

alternatives. Due to the small number and size of Hawai'i electric utilities, this requirement should not be unduly burdensome.

PUC-IR-53 (All Parties) Ref: HECO-CA-IR-34 at 67.

What are the benefits and drawbacks to a utility offering utility-controlled sites for 3rd parties to develop in the competitive bidding process? What terms and process should apply?

RESPONSE:

Potential drawbacks may occur if all third parties are not allowed to compete on an equal playing field for the use of utility sites. One of the major drawbacks to the utility and its consumers are the additional resources and risks caused by the presence of non-utility persons and equipment in the midst of utility operations. These include security risk, risk of technical interference, and risk of loss or damage caused by the third party. These risks could be mitigated by requiring adherence to adequate and fair risk management practices, indemnification agreements, and insurance and bonding requirements.

The offer of specific, utility-controlled sites may also limit the technologies that may be considered. For example, a specific utility-controlled site may only be viable for fossil-fueled generation while the option of multiple sites may allow technologies such as waste-to-energy, biomass and methane-fueled generation to be considered. Similar to the County, utilities are usually not the owners or controllers of

undeveloped land in multiple locations to be used for
generation.

PUC-IR-55 (All Parties) Ref: CA SOP at 56 states.

The Commission should ensure that a utility's RFP design and bid package materials are developed in a manner that will ensure an appropriate measure of transparency.

- a. (CA) Please specify the components of "appropriate measure of transparency."

RESPONSE: NA

- b. (All Parties) What features should be included in the RFP design and bid packages to provide enough information about the selection process so as to maximize participation by the widest possible range of bidders?

RESPONSE:

As stated above, the County believes that "out of the box" solutions that promote renewables should be encouraged. The utilities should be required to propose a "best practice" for bid design and preparation, which would then be approved by the Commission after an opportunity for public review and comment.

PUC-IR-56 (All Parties)

- a. Should the Commission have an active role in the RFP development process?

RESPONSE:

As stated above, Commission approval should be required for each utility's "best practice" for RFPs. It is prudent for the utility to develop the RFP, but the Commission should have review oversight and a final decision on the RFP conditions to allow for a fair and equitable process for all competing vendors. A utility RFP should also be subject to challenge after award (but before project implementation), similar to the challenges allowed under the State procurement law, Hawai'i Revised Statutes chapter 103D.

- b. Should an independent consultant be hired to provide input and recommendations to the utility and Commission regarding the drafting of the RFP? If so, who should fund the cost of the independent consultant?

RESPONSE:

Yes. The Commission should fund the cost of the independent consultant.

- c. Should the utility independently develop the RFP (subject to approval by the Commission prior to its issuance)?

RESPONSE: Yes.

- d. Should the utility hold a workshop with potential bidders and other interested parties prior to the release of the RFP, and potentially incorporate comments and suggestions into the final RFP?

RESPONSE:

Yes, a pre-RFP workshop should be very helpful to the utilities.

PUC-IR-57 (All Parties) Ref: HREA SOP at 13; HECO-HREA-IR-11; CA SOP at 3; HECO-CA-IR-3.

- a. Should different types of resources (e.g., renewable resources, new technologies, and traditional resources; supply-side and demand-side resources, as-available v. firm capacity resources; and distributed resources) compete through the same RFP? Or

RESPONSE: Yes.

- b. Should there be separate RFPs issued for different types of resources, which would all be issued simultaneously, to address a particular need? Or

RESPONSE: No.

- c. Should a solicitation be targeted to a particular resource for a particular need, such that there will only be one RFP issued at one time?

RESPONSE: No.

- d. Where different types of resources compete through the same RFP, what criteria should be used to evaluate the different benefits of different resources?

RESPONSE:

As a philosophical matter, aside from an incentive to promote renewables, all resources should be evaluated in the same way. As a practical matter, different resources may require different review criteria. The standards for setting review criteria should be proposed by the utility and approved by the

Commission as a "best practice." A workshop on this subject might be helpful.

- e. Discuss the benefits and drawbacks of issuing one RFP for different types of resources versus targeted solicitations that seek a particular resource?

RESPONSE:

Targeted solicitations that seek a particular resource tend to encourage conventional utility views, and should not be encouraged unless the Commission determines an exemption is necessary because of site or technical constraints. As previously stated, innovative, cost-effective solutions should be encouraged in order to achieve maximum ratepayer and societal benefits.

PUC-IR-59 (All Parties)

- a. Who should determine what the required qualifications for bidders (e.g. creditworthiness, reputation, experience) should be?

RESPONSE:

The standard for setting qualifications should be a part of the Commission-approved "best practice". Qualifications for specific projects should be set by the utility within the parameters of the "best practice." Competing bidders should be allowed to challenge the qualifications of the selected bidder in a post-award bid challenge. See, Hawai'i Revised Statutes chapter 103D.

- b. Should the required qualifications of potential bidders be clearly outlined in the RFP?

RESPONSE:

Yes, minimum qualifications should be clearly stated in the RFP to eliminate unqualified bidders and post-award disputes.

- c. Should a pre-qualification process be conducted on bidders before accepting bids?

RESPONSE:

If lead time is a constraint, a pre-qualification process may be appropriate. A pre-qualification process should not be so rigid that it excludes new technologies or new entrants.

- d. If yes, who should pre-qualify the bidders?

RESPONSE:

The utility can prequalify bidders based on its Commission-approved "best practice" for bidder qualification. Bidders eliminated by the prequalification process should have the ability to appeal to the Commission.

PUC-IR-60 (All Parties)

- a. Should the Commission have an active role in the development of the bid evaluation criteria?

RESPONSE: Yes, definitely.

- b. Should an independent consultant be hired to provide input and recommendations to the utility and Commission regarding the bid evaluation criteria? If so, who should fund the cost of the independent consultant?

RESPONSE:

Yes. The Commission should fund the cost of the independent consultant.

- c. Should the utility independently establish the bid evaluation criteria (subject to approval by the Commission prior to its issuance)?

RESPONSE: Yes.

- d. Should the utility hold a workshop with interested parties prior to the release of the RFP, to discuss the bid evaluation criteria so that bidders clearly understand how their bids will be evaluated?

RESPONSE: Yes.

PUC-IR-61 (All Parties) Ref: HECO-CA-IR-12(b) states.

Some of the important factors may include, but are not limited to, generation system reliability and capacity requirements, opportunities to secure low-cost energy, renewables requirements, emissions impacts, location, risk exposure and rate impacts.

The above response identifies certain factors that should be considered in the review of competitive bid responses. Please identify any other factors that should be considered during the review of the competitive bids.

RESPONSE:

Other costs (in addition to immediate rate impact) are financial ability, experience, and qualification of the bidder, and community input regarding the proposed technology.

PUR-IR-62 (All Parties) HECO SOP, Exhibit A, at 30 states:

To ensure that all reasonable options are effectively considered, there should be no unreasonable restrictions on sizes and types of projects. It is generally preferable that all types of eligible projects (e.g. supply-side options) have a fair opportunity to compete. (emphasis in original)

And HECO SOP, Exhibit A, at 32 states:

4. Price-related evaluation criteria are the predominant selection criteria. Non-price criteria are used to ensure the project or portfolio is viable and feasible but price is usually the ultimate determinant.

What mechanisms, if any, are appropriate to account for the non-monetary costs or benefits of different types of resources?

RESPONSE:

The County does not have sufficient technical knowledge to suggest appropriate mechanisms, and defers to the technical experts. However, it reiterates that "out of the box," rather than customary utility thinking and solutions should be sought and encouraged.

PUC-IR-64 (All Parties)

- a. Who should hire the Independent Consultant - the utility or the Commission?

RESPONSE:

The County does not understand the reference to "Independent Consultant" as used in this question, as the term has appeared in several contexts. (See County response to PUC-IR-56 b.) Generically, the County is inclined to support the hiring of independent consultants by the Commission.

- b. Should the Independent Consultant develop bid evaluation criteria and make a recommendation for the project award without input by the utility? [Ref. HREA Response to HECO-IR-9 at 11] Or can the input be from all parties?

RESPONSE:

To supplement its in-house expertise, the Commission should hire independent consultants to develop generic guidelines for the procurement process and review utility submissions, including proposals for the more specific "best practices" to be used by the utilities in the procurement process. The input should be from all parties.

- c. Is an Independent Consultant required for all competitive bids - or only those where a utility affiliate does not compete?

RESPONSE:

If the term "Independent Consultant" applies to independent experts hired by the Commission, the County supports the use of these experts for all competitive bids.

PUC-IR-66 (All Parties) Ref: CA SOP at 59; HECO-CA-IR-64.

- a. If the Commission adopts the guidelines recommended by the Consumer Advocate, and implements these concepts, are these sufficient to ensure that a utility's participation in the competitive bid process is fair?

RESPONSE:

No. (Please see County response to PUC-IR-19.) In addition, substantial institutional and personal penalties should be imposed on violators (utilities and suppliers), similar to the penalties incorporated in federal, state, and county procurement laws and regulations.

- a. What are the advantages and disadvantages of adopting these guidelines?

RESPONSE:

A disadvantage of the Consumer Advocate's proposal is its proposition in CA-SOP at 59-60, that a utility may submit a bid in its own solicitation, without penalties for self-dealing. Further, if utilities are allowed to compete in their own solicitations, there is no incentive for utilities to vary their practices and view generation requirements innovatively. (See County response to PUC-IR-24).

b. What other safeguards should be adopted?

RESPONSE: See a. and b. above.

PUC-IR-67 (All Parties) Ref: HECO-CA-IR-48 states:

The Consumer Advocate recommends that each electric utility should be expected to design bid evaluation processes that are specific to the circumstances of each competitive solicitation, and in keeping with "best practices" in the industry.

To the extent that this approach could potentially allow a utility to tailor specific bid evaluations to favor certain bidders, what safeguards can be implemented to prevent this?

RESPONSE:

Commission approval of the bid evaluation process should be required. In addition, utilities found to have tailored bid specifications or evaluation should be penalized. Substantial institutional and personal penalties should be imposed on violators (utilities and suppliers), similar to the penalties incorporated in federal, state, and county procurement laws and regulations.

PUC-IR-68 (All Parties) Ref: HECO-CA-IR-68.

The Consumer Advocate suggests a generic policy intended to balance the needs for "transparency" and confidentiality during the bid review process. Please provide specific suggestions on how this balance can be met.

RESPONSE:

If any utility participation raises issues of transparency and confidentiality, an independent bid reviewer is required. If a utility can exhibit that it is able to conduct a transparent and confidential process, it makes sense to test the process, but substantial penalties should be in place for violations.

PUC-IR-69 (All Parties) HECO-CA-IR-10.

- a. Should bidders' track record on past projects be a factor in selection and if so, how significantly should it be weighted?

RESPONSE:

Yes, track record should be a factor. The weight to be given may vary procurement-by-procurement.

What elements of the track record should be considered?

RESPONSE:

As reflected in the State procurement regulations (Hawai'i Administrative Rules (HAR) section 3-122-46), the RFP should dictate the weight to be given the various factors. The relative importance of track record, price, and other critical criteria need to be weighed and the weighing set forth in the RFP. The selection process should then merely assign weights as dictated in the RFP. The State procurement regulations require a description of the distribution of weighing among price and other criteria, including technical capability and approach for meeting performance requirements, competitiveness and reasonableness of price, managerial capabilities, and best value factors. HAR section 3-122-46(7).

- b. Will according significant weight to a track record cause newer generators without track records or smaller independent companies to lose out to more established utility affiliates or large independents?

RESPONSE:

The Commission and utilities should rightfully be concerned about companies' track records. A good track record is earned. There are many, small independent companies with excellent track records that can compete as long as there is a level playing field. The County favors a broader definition that includes relevant experience of the principals and resources available to assist the company.

Should the Commission be concerned about this impact?

RESPONSE:

Yes. The Commission needs to be concerned that reputable companies are considered but not at the expense of stifling competition. The Commission should support a broad definition of track record and allow/support the assignment of other evaluation factors such as externality costs and innovation of approach with assigned weights equal or greater than cost.

PUC-IR-71 (All Parties)

- a. Should the Commission have an active role in the development of the purchase agreement?

RESPONSE:

Yes. The development of a model purchase agreement by the Commission will simplify implementation of its general competitive bidding guidelines. Utilities should be required to use the model agreement, and changes to the model should require prior Commission approval at the outset.

- b. Should an independent consultant be hired to provide input and recommendations to the utility and Commission regarding the drafting of the purchase agreement?

RESPONSE: Yes.

If so, who should fund the cost of the independent consultant?

RESPONSE:

The costs of consultants to develop the model agreement should be paid for by PUC fees. The cost of reviewing changes proposed by a utility to the model should be borne by the cost-causer utility. The Commission could assess this charge through an application review fee.

- c. Should the utility and the winning bidder independently develop the purchase agreement (subject to approval by the Commission prior to its issuance)?

RESPONSE:

This could be an option in some cases, to expedite the Commission's review process of agreements where the model could not be used.

PUC-IR-72 (All Parties)

Should a copy of the proposed purchase agreement be included as part of the issuance of the RFP?

RESPONSE:

Yes. It is an essential part of the RFP because without it, bidders may have difficult pricing.

PUC-IR-73 (All Parties) Ref: HREA SOP at 10-11; HREA-HECO-IR-11.

Should there be a standard model purchase agreement to be used for all purchases (with possible minor modifications), or should the purchase agreement for each new transaction be separately drafted?

RESPONSE:

There should be a standard model. Please see County response to PUC-IR-71.

PUC-IR-74 (All Parties) Ref: HECO-CA-IR-17.

- a. To what extent should the price and non-price terms of a purchase agreement be subject to subsequent negotiation with the utility and amendment, if the changes are beneficial to both parties and the ratepayers?

RESPONSE:

Subsequent negotiations should not be allowed, except in extraordinary situations, without the approval of the Commission. Public procurement laws, including the State procurement law (HRS chapter 103D) provide some guidance regarding the conditions under which subsequent negotiations could be allowed without violating the integrity of the procurement process.

- b. What should be the conditions placed on further negotiation?

RESPONSE: See response above.

- c. If the utility affiliate is the winning bidder, do your answers to (a) or (b) change, or are there safeguards that would allow for further negotiation with the utility?

RESPONSE: No.

PUC-IR-75 (All Parties) Ref: CA SOP at 61 states:

...the Commission should make explicit that costs would be recoverable through rates on a "pass-through" basis if incurred through an approved contract that results from an RFP issued in response to approved competitive bidding process.

Are there any circumstances where the Commission might disallow costs resulting from an approved contract that results from an RFP and if so, what are they?

RESPONSE:

Yes. Ratepayers should not be required to assume the burden of costs that are caused by the negligence of the utility and/or the bidder/supplier. In these cases, the cost-causer or causers should assume the costs.

PUC-IR-76 (All Parties) Ref: HECO-CA-IR-19(b).

- a. In the future, how should we evaluate to what extent the competitive bid process has been "successful" - what are the specific factors that can and should be recorded and evaluated?

RESPONSE:

Part of this docket should include goal-setting and measures of achievement. These would serve as evaluation factors.

- b. Should we set target values for these factors, such that continuation or amendment of the competitive bid process may be contingent on meeting these target values?

RESPONSE:

As stated above, the County supports setting goals and measuring goal achievement. Depending on how they are defined, target values could fit in well.

- c. What is the appropriate process and time frame for review of the success of the competitive bid process?

RESPONSE:

The process should be continuously evaluated, because it makes no sense to continue a process that does not result in value. However, the County also supports setting appropriate review dates. While we have no proposal, the review dates should be set so that the review can be based on sufficient data to perform a reasoned evaluation.

PUC-IR-77 (All Parties) Ref: CA SOP at 56 states:

If a utility can demonstrate that it is doing a particularly good job in resource procurement, the Commission should consider an increase to its allowed return. Conversely, poor performance will require the consideration of a reduction.

- a. What criteria should be applied to determine whether a utility is doing a "good job" in competitive resource procurement?

RESPONSE:

The County does not agree with CA SOP at 56, as it applies to a cooperative, as the increase to its allowed return would come from the member/owners who are the ratepayers. Doing a "good job" does not always have to be tied to an increase in return or other incentives. Doing a "good job" should be expected of the utility.

- b. What factors, such as savings or added efficiencies, would a utility have to demonstrate to qualify for an added rate of return?

RESPONSE: NA

- c. **(All parties except CA)** Do you agree that an increase in return is justified for a utility that successfully implements competitive bidding?

RESPONSE:

Competitive resource procurement should be the standard expectation of a good business and will be reflected in

an economic and efficient resource. The County does not agree that a successful implementation of competitive bidding justifies an increase in return for its co-op, KIUC. Any increase in return comes directly from the ratepayers/owners, who can reasonably expect the utility to procure resources in an economic and efficient manner as a normal course of doing business.

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing County of Kaua'i's Responses to the Public Utilities Commission's Information Requests together with this Certificate of Service, were served by first class mail, postage prepaid to the following on June 9, 2005:

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