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BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF HAWAII

----In the Matter of----	)	
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PUBLIC UTILITIES COMMISSION	)	DOCKET NO. 03-0372
	)	
Instituting a Proceeding to Investigate Competitive Bidding for New Generating Capacity in Hawaii.	)	

DECISION AND ORDER NO. 23121

Filed Dec. 8, 2006

At 11 o'clock A.M.

Karen Higashi

Chief Clerk of the Commission

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 Decision and Order No. 23121

DECISION AND ORDER

By this Decision and Order, the commission adopts the attached Framework for Competitive Bidding dated December 8, 2006 ("Framework"),[1] to govern competitive bidding as a mechanism for acquiring or building new energy generation in Hawaii. Consistent thereto, the electric utilities shall submit to the commission for review and approval their: (1) proposed tariffs governing interconnection and transmission upgrades; and (2) proposed Codes of Conduct, as set forth herein.

I.

Background

On June 30, 2006, the commission issued Decision and Order No. 22588, which sets forth a proposed framework to govern competitive bidding as a mechanism for acquiring or building new

[1]The Framework is attached as Exhibit "A." Attached as Exhibit "B" is a version of the Framework that reflects changes made to the proposed framework dated June 30, 2006.

Unless noted otherwise by the context of this Decision and Order, deletions to the proposed framework are bracketed, while additions are underscored.

energy generation in Hawaii ("Proposed CB Framework"). Specifically, the Proposed CB Framework outlines a comprehensive mechanism for the electric utilities to acquire a future generation resource or a block of generation resources under the competitive bidding process.[2] In its Decision and Order, the commission directed the Parties[3] to submit any comments on the Proposed CB Framework no later than July 31, 2006.[4]

On September 11, 2006, the HECO Utilities and the Consumer Advocate filed their respective comments on the commission's Proposed CB Framework,[5] including comments on the appropriate treatment of federally-recognized qualifying facilities ("QFs") under the Proposed CB Framework. Also, on September 11, 2006, HREA filed its comments, which were limited

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[2]The commission utilized the Stipulation Regarding Competitive Bidding Framework jointly filed by the HECO Utilities, KIUC, and the Consumer Advocate on May 22, 2006 ("Stipulated Framework"), as a foundation for the Proposed CB Framework.

[3]The Parties are HAWAIIAN ELECTRIC COMPANY, INC. ("HECO"), HAWAII ELECTRIC LIGHT COMPANY, INC., MAUI ELECTRIC COMPANY, LIMITED ("MECO") (collectively, "HECO Utilities"), KAUAI ISLAND UTILITY COOPERATIVE ("KIUC"), HAWAII RENEWABLE ENERGY ALLIANCE ("HREA"), and the Department of Commerce and Consumer Affairs, Division of Consumer Advocacy ("Consumer Advocate").

[4]Based upon good cause shown, the commission granted several requests for extensions of time such that the deadline to file the Parties' comments was extended to September 11, 2006. See commission's letter, dated August 3, 2006; Stipulated Procedural Order No. 22795, filed on August 23, 2006; and Order No. 22804, filed on August 30, 2006.

[5]HECO Utilities' Response to Decision and Order No. 22588 and Comments on Proposed Framework for Competitive Bidding, Exhibits A - C, and Certificate of Service, filed on September 11, 2006 (collectively, "HECO's Comments"); and Consumer Advocate's Comments on the Competitive Bidding Framework Proposed in Decision and Order No. 22588 and Discussion of the Relationship of Competitive Bidding and PURPA, and Certificate of Service, filed on September 11, 2006 ("Consumer Advocate's Comments").

to the appropriate treatment of federally-recognized QFs under the Proposed CB Framework.[6] KIUC notified the commission that it was not submitting any comments.

This Decision and Order reviews the Parties' comments and makes the necessary revisions to the Proposed CB Framework, adopting as reasonable many of the recommendations noted by the HECO Utilities and the Consumer Advocate. The revisions to the Framework and the commission's comments in this Decision and Order provide further clarity and consistency to the Framework and effectively respond to the recommendations, without changing the Framework's underlying principle that competitive bidding (unless exempted or waived by the commission for a specific project) is established as the required mechanism for acquiring a future generation resource or a block of generation resources, whether or not such resource has been identified in an electric utility's Integrated Resource Plan ("IRP").[7]

The commission, by this Decision and Order, adopts the attached Framework to govern competitive bidding as a mechanism for acquiring or building new energy generation in Hawaii.

II.

Part I, Definitions

For Part I, the commission amends the definition of "Independent Observer" to delete the reference to the independent observer as "a neutral person or entity that is an expert in

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[6]HREA's Response to Commission Questions, and Certificate of Service, filed on September 11, 2006 ("HREA's Comments").

[7]See Framework, Part II.A.3.

interconnection and transmission upgrades, pursuant to Part IV.I.5 of the Framework[,]" for the reasons stated in Section V.E of this Decision and Order. The commission also includes a definition of "QF" or "qualifying facility" in Part I.

III.

Part II, Context for Competitive Bidding

A.

Part II.A, Use of Competitive Bidding

The HECO Utilities seek to expand the scope of exemptions from the competitive bidding process currently set forth in Part II.A.3.e of the Proposed CB Framework. The HECO Utilities contend that since the commission has chosen to mandate competitive bidding, certain exemptions that are consistent with the principles governing waivers in Part II.A.3 of the Framework should be incorporated to obviate the need to file waiver requests following the commission's adoption of the Framework. The commission finds merit to the HECO Utilities' contention, and thus, adopts the specific exemptions to the Framework described below.

The commission adopts as reasonable the "exemptions based on size" proposed by the HECO Utilities:

> (1) Generating units with a net output available to the utility of 1% or less of a utility's total firm capacity, including that of independent power producers, or with a net output of 5 MW or less, whichever is lower. For systems that cover more than one island (i.e., MECO's system, which has generation on Maui, Molokai and Lanai), the system firm capacity will be determined on a consolidated

basis.[8] HECO's Comments, Section I(A)(2)(a)(1), at 3 - 7.[9]

(2) Distributed generating units at substations and other sites installed by the utility on a temporary basis to help address reserve margin shortfalls. HECO's Comments, Section I(A)(2)(a)(3), at 8 - 9.

(3) Customer-sited, utility-owned distributed generating units that have been approved by the commission in accordance with the requirements of Decision and Order No. 22248, issued January 27, 2006, as clarified by Order No. 22375, issued April 6, 2006 in Docket No. 03-0371. HECO's Comments, Section I(A)(2)(a)(4), at 9 - 10.

(4) Renewable energy or new technology generation projects under 1 MW installed for "proof-of-concept" or demonstration purposes. HECO's Comments, Section I(A)(2)(a)(5), at 10.

See Framework, Part II.A.3.f.

The commission also adopts as reasonable the "exemptions applicable to qualifying facilities and non-fossil fuel producers" proposed by the HECO Utilities:

(1) Power purchase agreements for as-available energy; provided that an electric utility is not required to offer a term for such power purchase agreements that exceeds five years if it has a bidding

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[8]The HECO Utilities also proposed a specific exemption for generating units installed on Molokai and Lanai, in the event the system firm capacity was not made on a consolidated basis for MECO:

> Generating units installed on Molokai and Lanai for the purpose of providing power to the electrical utility systems on these islands.

HECO's Comments, Section I(A)(2)(a)(2), at 8 - 9. As acknowledged by the HECO Utilities, the commission's adoption of the consolidated methodology for MECO renders moot the need to adopt the specific exemption for generating units installed on Molokai and Lanai. See HECO's Comments, at 8 n.8.

[9]According to the HECO Utilities, the exemption threshold would be 5 MW for HECO (which is less than 1% of 1,657.4 MW); 2.72 MW for HELCO (1% of 271.9 MW); and 2.72 MW for MECO (1% of 250 MW + 10.4 MW + 12 MW), as evidenced by their 2006 Adequacy of Supply Reports. HECO's Comments, at 3 - 4.

program that includes as-available energy facilities.

(2) Power purchase agreements for facilities with a net output available to the utility of 2 MW or less.

(3) Power purchase agreement extensions for three years or less on substantially the same terms and conditions as the existing power purchase agreements and/or on more favorable terms and conditions.

(4) Power purchase agreement modifications to acquire additional firm capacity or firm capacity from an existing facility, or from a facility that is modified without a major air permit modification.

(5) Renegotiations of power purchase agreements in anticipation of their expiration, approved by the commission.

HECO's Comments, Section I(A)(2)(b), at 10 - 17. See Framework, Part II.A.3.g.

Likewise, the commission concurs with the HECO Utilities' proposal to clarify and expand the scope of the grandfather exception presently set forth in Part II.A.3.e of the Proposed CB Framework, governing offers by non-fossil fuel producers, to read as follows:

> This Framework does not apply to: (i) the three utility projects currently being developed: Hawaiian Electric Company, Inc.'s Campbell Industrial Park CT-1, Hawaii Electric Light Company, Inc.'s Keahole ST-7, and Maui Electric Company, Ltd.'s Maalaea M-18; [and (ii) offers to sell energy on an as-available basis by non-fossil fuel generation producers that are under review by an electric utility at the time this Framework is adopted. The offers to sell energy that are exempt from this Framework under Sub-part II.A.3.e.(ii) are limited to those that are set forth in: the Kauai Island Utility Cooperative's Oral Argument Hearing Exhibit A, dated June 19, 2006; and the list from Hawaiian Electric Company, Inc., Hawaii Electric Light Company, Inc., and Maui Electric Company, Ltd., submitted to the Commission and Consumer Advocate under confidential protective

> order on June 27, 2006.] **(ii) offers to sell energy on an as-available basis by non-fossil fuel producers that were submitted to an electric utility before this Framework was adopted; and (iii) offers to sell firm energy and/or capacity by non-fossil fuel producers that were submitted to an electric utility before this Framework was adopted, or that resulted from negotiations with respect to offers to sell energy on an as-available basis by non-fossil fuel producers that were submitted to an electric utility before this Framework was adopted; provided that negotiations with respect to such firm energy and/or capacity offers are concluded no later than December 31, 2007.**

HECO's Comments, Section II(A)(3)(e)), at 18.[10] See Framework, Part II.A.3.e.

The HECO Utilities and the Consumer Advocate seek clarification of the language set forth in Part II.A.3.c(i) of the Proposed CB Framework, governing possible waivers for the expansion or repowering of existing utility generating units.

The commission, in response, for clarity purposes, amends Part II.A.3.c to read as follows:[11]

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[10]The offers from non-fossil fuel producers that are exempt from competitive bidding under Part II.A.3.e of the Framework are limited to those set forth in: (1) KIUC's Oral Argument Hearing Exhibit A, dated June 19, 2006; and (2) the HECO Utilities' list submitted to the commission and the Consumer Advocate under confidential protective order on June 27, 2006, as updated by the HECO Utilities on September 11, 2006. See HECO's Comments, at 11; and confidential Exhibit A attached thereto.

[11]Sub-part (ii) is also deleted as unnecessary, since the "[r]enegotiation of power purchase agreements in anticipation of their expiration, approved by the commission[,]" is now exempt from the Framework. See Framework, Part II.A.3.g(v).

The Consumer Advocate also states that subpart (iv) of II.A.3.c "merits attention" because "[t]he meaning of 'governmental objective' is not clear." Consumer Advocate's Comments, at 43. The Consumer Advocate states that "[t]he Commission needs to define 'governmental objective' to avoid confusion, or the modification to the Stipulated Framework should be deleted." Id. The commission declines to adopt the Consumer Advocate's recommendation to define or delete as unclear

> Other circumstances that could qualify for a waiver include: (i) the expansion or repowering of existing utility generation units **[**(provided that a waiver means the electric utility need not conduct competitive bidding for the job of expansion or repowering; and provided further that the waiver will not relieve the electric utility of an obligation to seek competitive bids for alternative means of supplying the capacity to be made available by the repowering or expansion); (ii) the renegotiation of existing power purchase agreements; (iii)**]** **(ii)** the acquisition of near-term power supplies for short-term needs; **[**(iv)**]** **(iii)** the acquisition of power from a non-fossil fuel facility (such as a waste-to-energy facility) that is being installed to meet a governmental objective; and **[**(v)**]** **(iv)** the acquisition of power supplies needed to respond to an emergency situation.

(Emphasis in original.) See Framework, Part II.A.3.c.

The HECO Utilities state that the language in Part II.A.4.a(i) of the Proposed CB Framework that requires an electric utility to file and obtain the commission's approval of a waiver application prior to expending any funds or resources relating to the proposed generation project may not necessarily be consistent with: (1) the commission's Standards for Electric Utility Service in the State of Hawaii, General Order No. 7, Rule 2.3(g)(2); (2) the need to conduct parallel and contingency planning; and (3) a utility's obligation to serve. The commission acknowledges the apparent inconsistency and amends Part II.A.4.a(i) to read as follows:[12]

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the term "governmental objective" as used in Part II.A.3.c(iv) of the Proposed CB Framework. See Framework, Part II.A.3.c(iii). Sub-paragraph (iv) (now sub-paragraph (iii) in the Framework), was adopted verbatim from Part I.A.3.c(iv) of the Stipulated Framework, which the Consumer Advocate appeared to have found acceptable by agreeing to the Stipulated Framework.

[12]The commission declines to adopt the Consumer Advocate's suggestion that "waiver requests might better accompany a utility's proposed RFP[.]" Consumer Advocate's Comments,

> For proposed generation projects included in, or consistent with, IRPs approved by the Commission prior to the effective date of this Framework, the electric utility shall file an application for waiver with the Commission, [and obtain Commission approval of the waiver request prior to expending or committing any funds or resources relating to the proposed generation project.] **as soon as practicable, consistent with Part II.A.4.a(iv), below.**

Framework, Part II.A.4.a(i).

B.

Part II.C, Relationship to Integrated Resource Planning

Part II.C of the Proposed CB Framework sets forth the relationship between competitive bidding and integrated resource planning. The HECO Utilities and Consumer Advocate take issue with Part II.C.3 of the Proposed CB Framework, contending that the language appears to restrict the commencement of competitive bidding until after an electric utility's IRP is approved by the commission. The commission makes clear that such an interpretation would be incorrect, but, clarifies Part II.C.3 to read as follows:

> A determination shall be made by the Commission in an IRP proceeding as to whether a competitive bidding process shall be used to acquire a generation resource or a block of generation resources that is included in the IRP. Actual competitive bidding for IRP-designated resources will **normally** occur after the IRP is approved, through an RFP, which is consistent with the IRP approved by the Commission. **However, during the transition into competitive bidding processes for new generation under this Framework, if the IRP in effect was approved prior to the effective date of this Framework, a utility shall initiate competitive bidding (or request a**

Section IV(B), at 43 - 44. In general, the commission notes that a waiver from the competitive bidding process will obviate the need for a request for proposal.

> **waiver under Part II.A.4) as may be required by this Framework. As required by the IRP Framework, such projects must be identified in or consistent with the IRP in effect at the time.**

Framework, Part II.C.3.

The commission also emphasizes that Part II.C.4 of the Framework sets forth the "general approach" governing the integration of competitive bidding into integrated resource planning, and the Framework generally favors flexibility,[13] consistent with Part II.A.3.d of the Framework.[14]

C.

Part II.D, Mitigation of Risks
Associated with Competitive Bidding

Part II.D.2 of the Proposed CB Framework addresses the parallel planning option, and provides in part that "[f]or each project that is subject to competitive bidding, the electric

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[13]As noted by the commission:

> Finally, while the Framework creates in the utility a competitive bidding obligation, the Framework leans conservatively, allowing for a great amount of flexibility and the consideration of requests for waiver where appropriate. This is because, as unique island systems that are not interconnected with other grids as they are on the mainland, the margin for error in Hawaii is smaller. Each island's system must stand on its own as efficient and reliable systems. The application and effects of the Framework will be known only as implementation occurs, so it must be designed with a fair amount of flexibility to address any unforeseen and unintended consequences.

Decision and Order No. 22588, at 12 (emphasis added).

[14]Part II.A.3.d states:

> Furthermore, the Commission may waive this Framework or any part thereof upon a showing that the waiver will likely result in a lower cost supply of electricity to the utility's general body of ratepayers, increase the reliable supply of electricity to the utility's general body of ratepayers, or is otherwise in the public interest.

utility shall submit a report on the cost of parallel planning upon the Commission's request." The Consumer Advocate "recommends that this reporting requirement be established as a formal requirement that will enable the Commission and other stakeholders to have ready access to the costs of parallel planning activities."[15]

The commission declines to adopt the Consumer Advocate's recommendation, noting that the underlying purpose of making the parallel planning cost report discretionary is to minimize the costs associated with competitive bidding. Moreover, the Consumer Advocate, on behalf of itself and "other stakeholders," can independently request that the electric utility complete and submit a parallel planning cost report to the Consumer Advocate and commission, upon a showing of need by the Consumer Advocate for that particular project. The commission, at this time, rejects as unnecessary the mandatory completion of a parallel planning cost report by an electric utility "for each project that is subject to competitive bidding[.]"

IV.

Part III, Roles in Competitive Bidding

A.

Part III.A, Electric Utility

The HECO Utilities and Consumer Advocate recommend deleting the references to the "best practices" standard set forth in Part III.A.2 and Part III.B.1 of the Proposed

[15]Consumer Advocate's Comments, Section IV(D), at 44 - 45.

CB Framework. The HECO Utilities contend that such a standard could defeat the purpose of having a relatively detailed Framework and lead to time-consuming and unnecessary disputes as to what constitutes "best practices," and that "best practices" for one group of stakeholders may not be "best practices" for another group.

The commission finds the joint recommendation reasonable, and amends Part III.A.2 and Part III.B.1 to read as follows:[16]

> Part III.A.2
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> In designing each competitive bidding process, each electric utility shall: (a) take **[all]** prudent steps to obtain information on the experiences of similarly-situated utilities and utilities that have conducted competitive bidding processes to address similar needs; and (b) take **[all]** prudent steps to take full advantage of available industry sources of related information. **["All prudent steps" include identifying and using best practices.]**
>
> Part III.B.1
>
> The primary role of the Commission is to ensure that: (a) each competitive bidding process conducted pursuant to this Framework is fair in its design and implementation so that selection is based on the merits; (b) projects selected through competitive bidding processes are consistent with the utility's approved IRP; (c) the electric utility's actions represent **[best]** **prudent** practices; and (d) throughout the process, the utility's interests are aligned with the public interest even where the utility has dual roles as designer and participant.

Framework, Part III.A.2 and Part III.B.1.

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[16]The commission declines to adopt the Consumer Advocate's suggestion of replacing the phrase "prudent steps" with "reasonable steps," which the Consumer Advocate notes is the phrase utilized in Part II.A.2 of the Stipulated Framework.

The Consumer Advocate recommends that the commission: (1) clarify its policy regarding the interface between the competitive bidding process and an electric utility's obligation to ensure that it has sufficient resources to reliably serve customers; and (2) state in no uncertain terms that the utility is responsible for resolving near-term reliability problems. As the Consumer Advocate asserts, "[w]hen system reliability considerations require a utility to act (i.e., to acquire new resources) before seeking approvals from the Commission, the utility should do so."[17]

The commission hereby expressly states that the Framework does not relieve the electric utility from its obligation to provide safe and reliable electric service to its customers, including the obligation to resolve reliability problems, both short- and long-term, and that the Framework's provisions do not implicitly relieve the utility from this basic, underlying obligation to serve.

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[17]Consumer Advocate's Comments, Section III(B), at 32 (footnote and text therein omitted). In addition, to assess the reasonableness of the utility's decision to not utilize a competitive bidding process, the Consumer Advocate recommends a two-part test for procurements outside of the IRP process if the utility seeks to recover the costs incurred to procure such resource. Under the Consumer Advocate's proposal, the utility must demonstrate that the procurement will: (1) yield substantial benefits relative to alternate resource options; and (2) cannot be delayed to the next IRP cycle. The commission declines to adopt any specific test at this time, noting that the Consumer Advocate and commission have the opportunity to review cost recovery matters in the context of the ratemaking process.

B.

Part III.C, Independent Observer

The Consumer Advocate contends that the independent observer's duties and responsibilities as set forth in the Proposed CB Framework "may be appropriate for competitive bidding processes that are intended to acquire generation that is of a larger size than the size of the units anticipated for Hawaii (e.g., well over one hundred megawatts)."[18] The Consumer Advocate anticipates that most requests for proposals will be to acquire resources that address smaller blocks of energy or capacity, approximately 50 MW or often much less. Thus, the Consumer Advocate states that "it may not be necessary to retain an independent observer for all competitive bidding solicitations, as the Commission's proposed Framework implies."[19] The Consumer Advocate reasons that "the Stipulated Framework offers a better approach by enabling the determination as to whether an independent observer is necessary to be made on a case-by-case basis."[20]

Moreover, the Consumer Advocate "notes that the Stipulated Framework only requires the retention of an independent observer whenever the utility or its affiliate submits a project proposal[,]" and that "where a utility (or its affiliate) are not participating in a solicitation process, an

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[18]Consumer Advocate's Comments, Section III(A), at 27.

[19]Consumer Advocate's Comments, Section III(A), at 27 (emphasis in original).

[20]Consumer Advocate's Comments, Section III(A), at 27. The Consumer Advocate also "recognizes that the services of independent observers are expensive." Id.

independent observer may not be necessary."[21] In summary, the Consumer Advocate suggests that requiring the retention of an independent observer only in the circumstances where the utility or its affiliate submits a bid is a more pragmatic approach.

The commission finds that no revisions to the Framework are necessary to address the Consumer Advocate's comments in this regard. Part III.C.1 of the Framework already states: "An Independent Observer is required whenever the utility or its affiliate seeks to advance a project proposal (i.e., in competition with those offered by bidders) in response to a need that is addressed by its RFP, or when the Commission otherwise determines."[22]

The commission rejects as unpersuasive the Consumer Advocate's recommendation to amend Part III.C.6 to reduce the commission's role in the independent observer selection process, because the commission, and just as important, potential bidders, need to be assured that the Independent Observer is sufficiently independent of and is not unduly controlled by the utility.[23]

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[21]Consumer Advocate's Comments, Section III(A), at 28 - 29.

[22]This language is substantially similar to the language set forth in Part II.C.1 of the Stipulated Framework agreed upon by the Consumer Advocate.

[23]Part III.C.6 of the Proposed CB Framework requires the commission to perform a number of tasks, including: (1) identifying qualified candidates for the role of independent observer; (2) approving a final list of qualified candidates; (3) ensuring that the contract is acceptable; and (4) directing various other tasks.

The Consumer Advocate asserts that the electric utilities should be fully capable of selecting qualified candidates for the independent observer role, and that the commission need not have

In addition, Part III.C.6 of the Proposed CB Framework provides in pertinent part: "The utility may recover prudently incurred Independent Observer costs from its customers upon approval of the Commission in a rate case or other appropriate proceeding." To effectuate this provision, the HECO Utilities state that the electric utility should be allowed to defer the costs incurred for the independent observer (i.e., deferred accounting).[24] The commission concurs with the HECO Utilities' recommendation, and amends Part III.C.6 to read as follows:

> Selection and contracting. The electric utility shall: (a) identify qualified candidates for the role of Independent Observer (and also shall consider qualified candidates identified by the Commission and prospective participants in the competitive bidding process); (b) seek and obtain Commission approval of its final list of qualified candidates; and (c) select an Independent Observer from among the Commission-approved qualified candidates. The electric utility's contract with the Independent Observer shall be acceptable to the Commission, and provide, among other matters, that the Independent Observer: (a) report to the Commission and carry out such tasks as directed by the Commission, including the tasks described in this Framework; (b) cannot be terminated and payment cannot be withheld without the consent of the Commission; and (c) can be terminated by the Commission without the utility's consent, if the Commission deems it to be in the public interest in the furtherance of the objectives of this Framework to do so. The utility may recover prudently incurred Independent Observer costs from its customers upon approval of the Commission in a rate case or other appropriate proceeding**[.]**<u>**, and may defer the costs prudently incurred for the Independent Observer (i.e., deferred accounting).**</u>

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such an extensive role in the selection of an independent observer as a routine matter. Instead, the Consumer Advocate notes that the Stipulated Framework allows the commission to identify independent observer candidates to the utility, but makes the utility responsible for selecting the independent observer, subject to commission review.

[24]HECO's Comments, Section I(E)(4), at 58.

Framework, Part III.C.6.[25]

V.

Part IV. The Request for Proposals Process

A.

Part IV.B, Design of the Competitive Bidding Solicitation Process

Part IV.B.6.e(i) of the Proposed CB Framework requires the independent observer to "submit its comments and recommendations to the Commission concerning the RFP and all attachments, simultaneously with the electric utility's proposed RFP."

The Consumer Advocate asserts that the requirement for the independent observer to review the electric utility's final, proposed request for proposal and submit the observer's comments and recommendations to the commission is unnecessary. Instead, the Consumer Advocate recommends that the "more pragmatic approach" is to have the utility identify the tasks to be performed by the independent observer to the IRP Advisory Group. Under this approach, the Consumer Advocate reasons that the independent observer will typically not be hired until after the commission reviews the draft request for proposal, representing a cost savings under the competitive bidding process.

The commission reiterates its interest in seeking independent input at the critical request for proposal stage, in

[25]The commission deletes the reference to "Code of Conduct" in Part III.C.2a of the Framework as it does not constitute a "step" in the competitive bidding process, and given the fact that the independent observer is required to "[m]onitor adherence to the Code of Conduct" in Part III.C.2.b(iii) of the Framework.

the form of the independent observer's comments and recommendations, as reflected in Part IV.B.6.e(i) of the Framework. Accordingly, the commission declines the Consumer Advocate's suggestion to revise Part IV.B.6.e(i).

B.

Part IV.E, Bid Evaluation/Selection Criteria

The HECO Utilities and the Consumer Advocate seek to delete the "shall be specified in the RFP, but" language set forth in Part IV.E.2 of the Proposed CB Framework, and instead, revert to the language in Part III.E.2 of the Stipulated Framework. The commission finds the joint recommendation reasonable, and thus, amends Part IV.E.2 to read as follows:

> The evaluation criteria and the respective weight or consideration given to each such criterion in the bid evaluation process [shall be specified in the RPF, but] may vary from one RFP to another (depending, for example, on the RFP scope and specific needs of the utility).

Framework, Part IV.E.2.

In adopting this revision to Part IV.E.2, the commission notes that Parts IV.E.5 and IV.E.10 of the Framework already provide as follows:

> Part IV.E.5
>
> Both price and non-price evaluation criteria (e.g., externalities and societal impacts, and preferred attributes consistent with the approved IRP), shall be described in the RFP, and shall be considered in evaluating proposals.
>
> Part IV.E.10
>
> The weights for each non-price criterion shall be fully specified by the utility in advance of the

> submission of bids, as they may be based on an iterative process that takes into account the relative importance of each system criterion given system needs and circumstances in the context of a particular RFP. The Commission, however, may approve of less than full specification prior to issuance of the RFP. Since the subjectivity inherent in non-price criteria creates risk of bias and diminution in bidders' trust of the process, the RFP must specify likely areas of non-price evaluation, and the evaluation process must be closely monitored and publicly reported on by the Independent Observer.

Framework, Part IV.E.5 and Part IV.E.10.

With respect to Part IV.E.10, above, the Consumer Advocate contends that the language therein is internally inconsistent.[26] In a similar vein, the HECO Utilities seek to amend the first sentence of Part IV.E.10, consistent with Part III.E.10 of the Stipulated Framework.[27]

The commission finds that no internal inconsistency exists, thus, no changes to Part IV.E.10 are necessary. Although this provisions states that "[t]he weights for each

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[26]In particular, the Consumer Advocate notes that Part IV.E.10 begins by stating that "the weights for each non-price criterion shall be fully specified by the utility in advance of the submission of bids," but later indicates that the commission may "approve of less than full specification" of the selection criteria in a request for proposal.

[27]Specifically, the HECO Utilities propose the following changes to Part IV.E.10:

> The weights for each non-price criterion **[**shall be**]** **<u>may not be</u>** fully specified by the utility in advance of the submission of bids, as they may be based on an iterative process that takes into account the relative importance of each system criterion given system needs and circumstances in the context of a particular RFP. The Commission, however, may approve of less than full specification prior to issuance of the RFP. Since the subjectivity inherent in non-price criteria creates risk of bias and diminution in bidders' trust of the process, the RFP must specify likely areas of non-price evaluation, and the evaluation process must be closely monitored and publicly reported on by the Independent Observer.

non-price criterion shall be fully specified by the utility in advance of the submission of bids," the commission "may approve of less than full specification prior to issuance of the RFP." (Emphasis added.)

C.

Part IV.F, Evaluation of the Bids

Part IV.F.2 of the Proposed CB Framework states that "[t]he electric utility shall document the evaluation and selection process for each RFP process, for review by the Commission in approving the outcome of the process (i.e., in approving a PPA or a utility self-build proposal)."

The Consumer Advocate proposes to amend Part IV.F.2 to allow the electric utility an appropriate measure of discretion in documenting the evaluation and selection process. The Consumer Advocate, in effect, seeks to replace "shall" with "can be expected to."

The commission notes that the requirement for the utility to document the evaluation and selection process for each request for proposal process will assist the commission in its review of the outcome of the winning bidder's proposal. Accordingly, the commission finds that no changes to Part IV.F.2 are necessary.

D.

Part IV.H, Fairness Provisions and Transparency

Part IV.H.4 of the Proposed CB Framework states:

> 4. If the electric utility chooses to use a closed process:
>
> a. The electric utility shall explain why the benefits of closure exceed the cost in terms of diminution in the bidders' trust in the process;
>
> b. The Independent Observer must understand the model and observe the entire analysis; and
>
> c. After the utility has selected a bidder, any losing bidder must receive sufficient and timely access to the model (but not the bidding information) to be able to replicate the analysis at is applied to its bid.

The Consumer Advocate recommends deleting sub-paragraph (a), stating that in general, a closed process will be desirable, while the HECO Utilities state that sub-paragraph (a) "appears to exhibit an inappropriate and undue bias against a closed bidding process, given the uncontroverted evidence in this docket that such a process currently is the 'best utility practice', and the Commission's own approval of that process in [Part] IV.H.3."[28] The commission agrees with the Consumer Advocate and the HECO Utilities and deletes sub-paragraph (a).

The HECO Utilities note that sub-paragraph (b) "assumes that there will be an IO, when an IO would not generally be required unless the utility or its affiliate participates in the RFP process."[29] The Consumer Advocate contends that sub-paragraph

[28]HECO's Comments, Section I(F)(4), at 67.

[29]HECO's Comments, Section I(F)(4), at 67.

(b) is impractical and problematic because the "model" that the independent observer must understand has not been clearly identified, and "observe the entire analysis" is unclear. The commission disagrees that sub-paragraph (b) assumes that there will be an independent observer, as sub-paragraph (b) would apply only in circumstances where an independent observer was selected. The commission, however, will clarify the language in sub-paragraph (b), as set forth below.

For sub-paragraph (c), the HECO Utilities oppose giving losing bidders timely access to the model, and propose three alternatives for the commission's consideration, including the utility agreeing to meet with losing bidders to provide a general assessment of the proposal. The HECO Utilities raise various concerns in their opposition to sub-paragraph (c), including their use of proprietary computer models and the existence of software licensing agreements that prohibit the disclosure of software to third-parties. The Consumer Advocate contends that sub-paragraph (c) is problematic because the judgments made by the utility to evaluate the proposals will make it virtually impossible for the losing bidder to "replicate the analysis as it [was] applied to its bid."[30] The commission agrees with the HECO Utilities and the Consumer Advocate and amends sub-paragraph (c), as set forth below.

In sum, recognizing the concerns raised by the HECO Utilities and the Consumer Advocate, the commission amends Part IV.H.4 by deleting sub-paragraph (a), and revising

[30]Consumer Advocate's Comments, Section III(C)(5), at 39.

sub-paragraphs (b) and (c) (now sub-paragraphs (a) and (b), respectively). Thus, Part IV.H.4, as amended, reads as follows:

> 4. If the electric utility chooses to use a closed process:
>
> a. [The electric utility shall explain why the benefits of closure exceed the cost in terms of diminution in the bidders' trust in the process;
>
> b. The Independent Observer must] **The utility shall provide the Independent Observer, if an Independent Observer is required, with all the necessary information to allow the Independent Observer to** understand the model and **to enable the Independent Observer to** observe the entire analysis **in order to ensure a fair process**; and
>
> [c.]**b.** After the utility has selected a bidder, [any losing bidder must receive sufficient and timely access to the model (but not the bidding information) to be able to replicate the analysis at is applied to its bid.]**, the utility shall meet with the losing bidder or bidders to provide a general assessment of the losing bidder's specific proposal if requested by the losing bidder within seven (7) days of the selection.**

Framework, Part IV.H.4.

Part IV.H.5 of the Proposed CB Framework states:

> The host electric utility shall be allowed to consider its own self-build proposals in response to generation needs identified in its RFP. An electric utility may consider a bid from its affiliate if the Commission determines, prior to commencement of the competitive bidding process, that the affiliate has no advantage due to its past or present relationship to the electric utility. Such an advantage includes, but is not limited to, having employees who, due to their former employment with the electric utility, have knowledge about the electric utility's needs not readily available to the employees of non-electric utility bidders. The restriction on electric utility purchases from an affiliate set forth in this paragraph does not apply when the affiliate

is a qualifying facility exercising its mandatory sales rights under PURPA.

The HECO Utilities contend that some of the requirements set forth in Part IV.H.5 go well beyond the requirements for affiliate participation in other jurisdictions, and ignore the requirement that the utility submit a Code of Conduct to the commission for review and approval prior to the commencement of any competitive bidding process under the Framework. The HECO Utilities assert that "the Code of Conduct, and not a special pre-approval process, should be the vehicle to address any concerns with participation by affiliates."[31] The Consumer Advocate recommends deleting the "due to their former employment" language, stating that such language is problematic, too detailed, and invites speculation on what an employee may or may not know through the employee's former position.

The commission, acknowledging the concerns raised by the HECO Utilities and Consumer Advocate, amends Part IV.H.5 to read as follows:

> The host electric utility shall be allowed to consider its own self-build proposals in response to the generation needs identified in its RFP. [An electric utility may consider a bid from its affiliate if the Commission determines, prior to commencement of the competitive bidding process, that the affiliate has no advantage due to its past or present relationship to the electric utility. Such an advantage includes, but is not limited to, having employees who, due to their former employment with the electric utility, have knowledge about the electric utility's needs not readily available to the employees of non-electric utility bidders. The restriction on electric utility purchases from an affiliate set forth in this paragraph does not apply when the affiliate

[31]HECO's Comments, Section I(E)(5), at 60.

> is a qualifying facility exercising its mandatory sales rights under PURPA.]

Framework, Part IV.H.5.

Part IV.H.7 of the Proposed CB Framework states:

> If the IRP indicates that a competitive bidding process will be used to acquire a generation resource or a block of generation resources, then the utility will indicate, in the submittal of its draft RFP to the Commission for review, which of the RFP process guidelines will be followed, the reasons why other guidelines will not be followed in whole or in part, and other process steps proposed based on good solicitation practice; provided that the Commission may require that other process steps be followed.

Although the HECO Utilities acknowledge that Part IV.H.7 was taken verbatim from the Stipulated Framework, they request that the commission clarify that the utilities may use the process described in Part IV.H.7 of the Proposed CB Framework "to modify the RFP process to fit the scope of the specific RFP that will be issued."[32] According to the HECO Utilities, it is not clear how Part IV.H.7 should operate given Part II.A.3.d., which applies to waivers. The commission hereby confirms that the electric utilities may use the process detailed in Part IV.H.7. to request approval for modifications to the RFP process.

The HECO Utilities recommend that the following sentence be deleted from Part IV.H.8 of the Proposed CB Framework:

> In order to accomplish these tasks, all participants in the bidding process shall have the opportunity to submit to the utility proposed methods for making fair comparisons (considering

[32]HECO's Comments, Section I(F)(1), at 64.

both costs and risks) between the utility-owned or self-build facilities and third-party facilities.[33]

The HECO Utilities contend that the language at issue presents "a novel requirement and, as a practical matter, the utility would have to solicit comments as part of the RFP process (which is the process by which 'participants' are identified)."[34]

To address these concerns, the commission shall utilize the pertinent language in Part III.H.7 of the Stipulated Framework, to amend Part IV.H.8 as follows:

> If proposed, utility self-build facilities or other utility-owned facilities (e.g., turnkey facilities), or facilities owned by an affiliate of the host utility, are to be compared against IPP proposals obtained through an RFP process. The Independent Observer shall monitor the utility's conduct of its RFP process, advise the utility if there are any fairness issues, and report to the Commission at various steps of the process, to the extent prescribed by the Commission. Specific tasks to be performed by the Independent Observer shall be identified by the utility in its proposed RFP. The Independent Observer will review and track the utility's execution of the RFP process to ascertain that no undue preference is given to an affiliate, the affiliate's bid, or to self-build or other utility-owned facilities. The Independent Observer's review shall include, to the extent the Commission or the Independent Observer deems necessary, each of the following steps, in addition to any steps the Commission or Independent Observer may add: (a) reviewing the draft RFP and the utility's evaluation of bids, monitoring communications (and communications protocols) with bidders; (b) monitoring adherence to codes of conduct, and monitoring contract negotiations with bidders; (c) assessing the utility's evaluation of affiliate bids, and self-build or other utility-owned facilities; and (d) assessing the utility's evaluation of an appropriate number of other bids. The utility

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[33]The term "tasks" refers to the utility's evaluation of bids, including its own bid, and the independent observer's review of that process.

[34]HECO's Comments, Section I(F)(5), at 67 - 68.

shall provide the Independent Observer with all requested information. Such information may include, without limitation, the utility's evaluation of the unique risks and advantages associated with the utility self-build or other utility-owned facilities, including the regulatory treatment of construction cost variances (both underages and overages) and costs related to equipment performance, contract terms offered to or required of bidders that affect the allocation of risks, and other risks and advantages of utility self-build or other utility-owned projects to consumers. The Independent Observer may validate the criteria used to evaluate affiliate bids and self-build or other utility-owned facilities, and the evaluation of affiliate bids and self-build or other utility-owned facilities. In order to accomplish these tasks, **[**all participants in the bidding process shall have the opportunity to submit to the utility proposed methods for making fair comparisons (considering both costs and risks) between the utility-owned or self-build facilities and third-party facilities. Such a comparison between self-build or other utility-owned facilities and IPP facilities may include modeling likely variation in construction costs, plant efficiency, plant outages, or operation and maintenance costs and assigning a risk premium to the self-build or other utility-owned facilities, and the likely impact of IPP proposals on the utility's capital structure, as well as the potential, in the case of a utility self-build bid, for cost overruns and fuel costs exceeding predictions. Such a comparison must make clear assumptions about the effect on the utility of the utility's own project.**]** **the utility, in conjunction with the Independent Observer, shall propose methods for making fair comparisons (considering both cost and risks) between the utility-owned or self-build facilities and third-party facilities.**

Framework, Part IV.H.8.

Part IV.H.9.c(i) - (iii) of the Proposed CB Framework states:

c. The Code of Conduct shall be signed by each utility employee involved either in advancing the self-build project or implementing the competitive bidding process, and shall require that:

(i) The electric utility shall establish internally a separate project team to undertake the evaluation;

(ii) No evaluation team member shall have any involvement with the electric utility self-build option or any career path that could be affected by such team member's evaluation;

(iii) During the RFP design and bid evaluation process, there shall be no oral or written contacts between the employees preparing the bid and the electric utility's employees responsible for bid evaluation, other than contacts authorized by the Code of Conduct and the RFP[.]

The HECO Utilities recommend replacing "shall" with "may" in sub-paragraph (i), representing that: (1) a shortage of skilled staff in many areas exists, including engineering; (2) only a small pool of available candidates who have the experience and knowledge to run complex utility models exists; and (3) their current staffing levels make it impractical, and in some cases impossible, to establish separate bid and evaluation teams.

For sub-paragraph (ii), the HECO Utilities and the Consumer Advocate recommend deleting the "any career path that could be affected by such team member's evaluation" language, with the HECO Utilities stating that utility employees may be hesitant to participate as evaluation team members if such participation effectively hinders their internal career promotional opportunities (i.e., the "any career path" prohibition).

For sub-paragraph (iii), the HECO Utilities request that the commission, in either the Framework or this Decision and

Order, clarify that the prohibition on communication between employees is limited to communication concerning the request for proposal, and that their employees are able to communicate on matters unrelated to the request for proposal, even when the request for proposal is active.[35]

The commission, to address these concerns, amends Part IV.H.9.c as follows:

> c. The Code of Conduct shall be signed by each utility employee involved either in advancing the self-build project or implementing the competitive bidding process, and shall require that:
>
> (i) **[**The**]**<u>**Whenever staffing and resources permit, the**</u> electric utility shall establish internally a separate project team to undertake the evaluation**[;]**<u>**, with no team member having any involvement with the utility self-build option;**</u>
>
> **[**(ii) No evaluation team member shall have any involvement with the electric utility self-build option or any career path that could be affected by such team member's evaluation;
>
> (iii)**]** <u>**(ii)**</u> During the RFP design and bid evaluation process, there shall be no oral or written contacts between the employees preparing the bid and the electric utility's employees responsible for bid evaluation, other than contacts authorized by the Code of Conduct and the RFP;

Framework, Part IV.H.9.c.

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[35]In the event the commission chooses to amend the Framework, the HECO Utilities propose that sub-paragraph (iii) be replaced with the following language:

> Any communication between utility RFP team members and prospective bidders, including contacts between utility employees preparing the bid and the employees responsible for bid evaluation, shall be pursuant to the Code of Conduct.

While sub-paragraph (iii) (now sub-paragraph (ii)), remains unchanged, the commission clarifies that "the prohibition on communication between employees is limited to communication concerning the RFP. The employees should be able to communicate on matters unrelated to the RFP (even when the RFP is active.)"[36] Furthermore, as explained by the HECO Utilities, "[t]he Code of Conduct then can spell out appropriate means to control communications relating to the RFP between members of the RFP development and bid evaluation team, and the members of the utility bid team, and that the members of the RFP development and bid evaluation team, and members of the utility bid team can communicate with each other on other matters not related to the RFP, even while the RFP is active."[37]

With respect to the Code of Conduct, the HECO Utilities, citing to a provision in Southwestern Electric Power Company's (Louisiana) ("SWEPCO") Code of Conduct, explain that: (1) SWEPCO's Code of Conduct is effectively limited to the duration of the request for proposal process; and (2) "[a] similar provision in the Code of Conduct for the HECO Companies would be appropriate."[38] The commission concurs with the

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[36]HECO's Comments, Section I(C)(2)(c), at 37.

[37]HECO's Comments, Section I(C)(2)(c), at 40.

[38]HECO's Comments, Section I(C)(2)(c), at 40.

HECO Utilities' assessment of including a similar provision in their Code of Conduct for the commission's review and approval.[39]

E.

Part IV.I, Transmission Interconnection and Upgrades

Part IV.I of the Proposed CB Framework governs transmission interconnection and upgrades. No comparable Part exists in the Stipulated Framework. Part IV.I.5 of the Proposed CB Framework contemplates the selection and retention of a *separate* "Independent Observer expert in interconnection and transmission upgrades[.]"

The HECO Utilities and Consumer Advocate propose to remove the requirement of a separate independent observer for the interconnection and transmission upgrade process. According to the HECO Utilities' consultant, the more typical approach is to have the independent observer for the request for proposal: (1) review the interconnection requirements study process; (2) participate and monitor the interconnection requirements studies as they are being performed; (3) review analyses completed and the conclusions reached; and (4) determine that the applicable criteria are applied consistently and that the interconnection studies are performed in a fair manner.

The commission finds reasonable the joint concerns over a separate independent observer for the interconnection and

[39]Part III.A.4 of the Framework requires the electric utilities to submit to the commission for review and approval (subject to modification if necessary) a Code of Conduct "prior to the commencement of any competitive bid process under [the] Framework."

transmission upgrade process. Accordingly, Part IV.I.5 is amended to read as follows:

> To ensure comparable treatment, [an] **the** Independent Observer [expert in interconnection and transmission upgrades, selected and contracted for in the same manner as the Independent Observer described in Part III.C.6, above,] shall review and monitor the electric utility's policies, methods and implementation and report to the Commission.

Framework, Part IV.I.5.

In response to the HECO Utilities' comment on the "more typical approach" scenario, the commission envisions that such tasks are part of the independent observer's duties under Part III.C.2.b(i) of the Framework.[40]

The HECO Utilities and Consumer Advocate note that Part IV.I of the Proposed CB Framework does not address if or when an interconnection requirements study should be conducted for a proposed bid. The HECO Utilities assert that interconnection requirements studies should be performed only for bids that have met the threshold criteria and made the "short list" of bids, in order to avoid the need to undertake and complete interconnection requirements studies on non-compliant or non-competitive bids.[41]

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[40]Part III.C.2.b(i) of the Framework states:

Monitoring. The Independent Observer shall:

(i) Monitor all steps in a competitive bidding process, beginning with the preparation of the RFP, or at such earlier time as determined by the Commission[.]

[41]As explained by the HECO Utilities:

With respect to the sequence in which the interconnection requirements studies would be performed for the bids that have made the "short list" of bids, generally

The HECO Utilities also seek confirmation that their planned, multi-step process for performing interconnection requirements studies in a request for proposal is consistent with the Framework.[42]

The commission finds that, in general, the HECO Utilities' plan to limit interconnection requirements studies to proposals that make the "short list" of bids, together with their proposed multi-step process for performing interconnection requirements studies, appear reasonable and consistent with the Framework, subject to review by the independent observer. That said, the commission finds that no

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> the studies would be performed starting with the bid evaluated as the most competitive at the point of the evaluation process, then proceeding to the next most competitive bid on the short list. In certain cases, it may be possible to undertake multiple interconnection requirements studies for multiple short list bids at the same time, depending upon factors such as resource availability, number of short list bids, RFP schedule, relative competitiveness of one bid to others, and the availability of all information and data from bidders necessary to perform interconnection requirements studies.

HECO's Comments, Section I(D)(2)(b), at 45.

[42]The HECO Utilities multi-step process includes:

1. Step 1, Area Map and Applicable Transmission Planning Criteria in RFP Package.

2. Step 2, Performance Standards as Threshold Criteria on All Bids Submitted in Response to an RFP.

3. Step 3, High-Level "Feasibility Analysis" on Bids That Meet Threshold.

4. Step 4, Detailed Interconnection Requirements Study of Bids on the Short-List.

See HECO's Comments, Section I(D)(2)(e), at 46 - 49.

amendments to Part IV.I of the Framework are necessary to implement these objectives.

VI.

Part V. Dispute Resolution Process

Part III.B.8 and Part V of the Proposed CB Framework reference the commission's informal expedited dispute resolution process to govern the commission's resolution of disputes arising out of the Framework.

The Consumer Advocate requests more specificity and guidance on the informal expedited dispute resolution process envisioned by the commission, while the HECO Utilities note that Part V "appears to be overly broad with respect to its potential application, as it could be applied to [Parts] III.B.4 and 5 (which address approval of the contract or utility project that is selected through the RFP process)."[43]

The commission finds that no revisions to the dispute resolution provisions of the Framework are necessary for the following reasons: (1) Part III.B.8 and Part V already provide sufficient details on the informal expedited resolution process and any further details would be contrary to establishing an informal expedited process (Part III.B.8 and Part V, in actuality, expand on the Dispute Resolution Process proposed in Part IV of the Stipulated Framework, providing more detail and guidance); and (2) it is clear that the commission's informal

[43]HECO's Comments, Section I(F)(6), at 68.

expedited dispute resolution process does not apply to Parts III.B.4 and III.B.5.[44]

VII.

Ratemaking

Part VII.D of the Proposed CB Framework amended the first sentence of Part VI.D of the Stipulated Framework by including the following proviso to govern the ratemaking treatment process for competitive bidding: "provided that the evaluation of the utility's bid must account for the possibility that the capital or running costs actually incurred, and recovered from ratepayers, over the plant's lifetime, will vary from the levels assumed in the utility's bid."

The HECO Utilities state that the proviso added by the commission to Part VI.D of the Stipulated Framework is both unnecessary, given the language in Part IV.H.8 of the Proposed CB Framework, and is too one-sided.

The commission finds the HECO Utilities' assertion unpersuasive, and thus, will not make any changes to Part VII.D, which reads in full:

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[44]Part III.B.4 specifically states that "[t]he Commission shall review, and approve or reject, the contracts that result from competitive bidding processes conducted pursuant to this Framework, in a separate docket upon application by the utility in which the expedited process in Part III.B.8 shall not apply." (Emphasis added.) Part III.B.5 requires the electric utility to seek the commission's approval "in keeping with established CIP Approval Requirements[]" in the event the "utility identifies its self-build or turnkey project as superior to bid proposals[.]" (Emphasis added.) The commission's CIP Approval Requirements do not include an expedited informal dispute resolution process. See Part I, Framework (definition of "CIP Approval Requirements").

> The regulatory treatment of utility-owned or self-build facilities will be cost-based, consistent with traditional cost-of-service ratemaking, wherein prudently incurred capital costs are included in rate base; provided that the evaluation of the utility's bid must account for the possibility that the capital or running costs actually incurred, and recovered from ratepayers, over the plant's lifetime, will vary from the levels assumed in the utility's bid. Any utility-owned project selected pursuant to the RFP process will remain subject to prudence review in a subsequent rate proceeding with respect to the utility's obligation to prudently implement, construct or manage the project consistent with the objective of providing reliable service at the lowest reasonable cost.

Framework, Part VII.D.[45]

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[45]The Consumer Advocate does not affirmatively recommend any changes to Part VII (Ratemaking) of the Proposed CB Framework. Instead, the Consumer Advocate states:

> On page 47 of D&O 22588, the Commission mentions risk factors to be applied to the evaluation process in considering a bid representing the utility's self build proposal. The Commission points specifically to "risk factors addressing the probability that later costs will exceed the original bid." The Consumer Advocate is concerned because the Commission has provided no guidance regarding the nature of the risk factors to be applied, and how they would be incorporated into a framework that is effective in addressing the "fundamental asymmetry" between utility and non-utility proposals. The Consumer Advocate requests that the Commission provide additional information to the parties in its final Decision and Order in this proceeding.

Consumer Advocate's Comments, Section IV(H), at 46 - 47.

The commission responds that the risk factors should be identified by the electric utility to the independent observer, and that "[s]uch evaluation must be monitored by the independent observer[,]" as noted by the commission in Decision and Order No. 22588, at 47.

VIII.

Qualifying Facilities

Decision and Order No. 22588 instructed the Parties to submit written briefs addressing the following five issues governing the treatment of entities designated as QFs under the Public Utility Regulatory Policies Act of 1978, as amended ("PURPA"),[46] in the context of the commission's Framework:

1. Is the commission authorized under PURPA and any other applicable laws to require that a QF must participate and submit a bid in a competitive bidding process established by the commission in order to preserve certain PURPA rights of the QF?

2. If yes, and the QF prevails in the competitive bidding process, what is the utility's avoided cost?

3. If yes, and the QF does not prevail in the competitive bidding process, what is the QF's PURPA rights, if any, and in conjunction thereto, what is the utility's avoided cost?

4. If yes, and the winning bidder is the utility's self-build option, what is the QF's PURPA rights, if any, and in conjunction thereto, what is the utility's avoided cost?

5. Identify and describe what amendments to HAR chapter 6-74, Standards for Small Power Production and Cogeneration, are necessary to implement effective competitive bidding in the State. Include any amendatory language proposed by the party.[47]

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[46]See generally 16 U.S.C. §§ 824 - 824w. "By 1995, the number of states which had some type of competitive bidding process for new generation resources had grown to 37." In re Cheyenne Light, Fuel and Power Co., Docket No. 20003-EA-02-67, Final Order, at ¶ 79(o)(Wyo. Pub. Serv. Comm'n, February 28, 2004).

[47]Decision and Order No. 22588, Section III(D), Treatment of PURPA "Qualifying Facilities," at 22 - 25. The fifth issue briefed by the HECO Utilities, the Consumer Advocate, and HREA discusses whether any amendments to Hawaii Administrative Rules ("HAR") chapter 6-74, Standards for Small Power Production and Cogeneration, are necessary to implement effective competitive bidding in Hawaii. In this regard, the commission notes that

In addition, Decision and Order No. 22588 instructed the Parties to comment on the following possible framework for addressing the treatment of PURPA QFs in the competitive bidding context:

1. For any resource to which the competitive bidding requirement does not apply (due to waiver or exemption), the utility retains its traditional obligation to purchase capacity and energy from a QF at avoided cost.

2. For any resource to which the competitive bidding requirement does apply, a QF must participate in the bidding process (which will include QFs and non-QFs) as a prerequisite to realizing its PURPA rights. The QF's treatment will then depend on whether the winner is a non-QF or a QF:

3. If a non-QF is the winning bidder:

   A. A QF will have no PURPA right to supply the resource provided by a non-QF winning bidder.

   B. If a non-QF winner did not supply all the capacity needed by the utility, or if a need develops between RFPs, a QF, upon submitting a viable offer, is permitted to exercise its PURPA rights to sell at avoided cost. The commission's determination of avoided cost will be bounded by the price level established by the winning non-QF.

4. Where there is no winning bidder because the utility's self-build option is the most attractive option, a QF is permitted to exercise its PURPA rights by making a viable offer to meet or beat the utility's self-build option.

5. If a QF is the winning bidder, the QF has the right to sell to the utility at its bid price.

As noted above, the HECO Utilities, the Consumer Advocate and HREA provided extensive briefing on the treatment of

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amendments to HAR chapter 6-74, if any, necessitate the commission's exercising its quasi-legislative functions under Hawaii Revised Statutes chapter 91, separate and apart from its quasi-judicial functions in this investigative docket. The commission acknowledges the Parties' comments on the fifth issue, which will assist the commission in its efforts in closely reviewing HAR chapter 6-74.

PURPA QFs, which the commission finds informative. According to the HECO Utilities, "there is authority in other jurisdictions for the propositions that (1) competitive bidding is a permissible means of determining a utility's avoided costs, (2) requiring the utility to deal with a QF just before a competitive bidding process is initiated or consummated would frustrate the competitive bidding process, and (3) a utility should be able to defer negotiations when it has definitive plans to utilize competitive bidding for its next block of capacity or it has an active competitive process underway."[48] In support thereto, the HECO Utilities cite to and discuss regulatory actions by the Virginia State Corporation Commission (In re Elec. Capacity Bidding Programs, Case No. PUE900029, 117 P.U.R.4th 409 (Va. State Corp. Comm'n 1990)) and (In re Virginia Elec. and Power Co., Case No. PUE980462, Order (Va. State Corp. Comm'n, Jan. 14, 1999)); North Carolina Utilities Commission (In re Biennial Determination of Avoided Cost Rates for Elec. Util. Purchases from Qualifying Facilities - 1994, Docket No. E-100, Sub 74, 162 P.U.R.4th 185 (N.C. Util. Comm'n 1995)); California Public Utilities Commission (Decision No. 05-09-022 (Cal. Pub. Util. Comm'n, Sept. 8, 2005)); Public Utility Commission of Texas (see 24 Tex. Reg. 3847 - 3856); and the Public Service Commission of Wyoming (In re Cheyenne Light, Fuel and Power Co., Docket No. 20003-EA-02-67, Final Order (Wyo. Pub. Serv. Comm'n, February 28, 2004)).[49]

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[48]HECO's Comments, Section I(A)(2)(b), at 14 - 15; and HECO's Exhibit B, Section III(B), at 6 - 7.

[49]HECO's Exhibit B, Section III(B), at 6 - 18.

Based on their analyses, the HECO Utilities conclude:

1. The commission is not authorized under PURPA or any other applicable laws to require that a QF must participate and submit a bid in a competitive bidding process established by the commission in order to preserve its PURPA rights. However, the commission does have the right to: (A) determine avoided costs, particularly avoided capacity costs, using a competitive bidding process; (B) defer a utility's obligation to negotiate with a QF pending completion of the competitive bidding process; and (C) determine the reasonable terms and conditions that will be made available to QFs that do not participate in commission-mandated competitive bidding processes.

2. If a QF prevails in the competitive bidding process, the QF has the right to sell to the utility at its bid price (unless the price is modified in the contract negotiations that are a part of the bidding process).

3. If the QF does not prevail in the competitive bidding process, and a non-QF is the winning bidder or bidders, the QF will not have a PURPA right to supply the resource provided by the non-QF winning bidder or bidders.

   A. If a non-QF winner or winners did not supply all the capacity needed by the utility, or if a need develops between RFPs that will not be satisfied by an RFP due to a waiver or exemption, a QF, upon submitting a viable offer, would be permitted to exercise its PURPA rights to sell at avoided cost.

   B. For any resource to which the competitive bidding requirement does not apply (due to waiver or exemption), the utility retains its traditional obligation to offer to purchase capacity and/or energy from a QF at avoided cost upon reasonable terms and conditions approved by the commission.

4. If the winning bidder is the utility's self-build option, the same answers apply.

5. The Commission should either modify the manner in which HAR § 6-74-15(c) is applied, limit the terms and conditions that must be offered pursuant to this rule, promulgate exceptions to the rule, or modify the rule. This rule specifies the time a

> utility has to negotiate with a QF after a "complete" offer is made by the QF.[50]

See HECO's Exhibit B, Section II, at 2 - 3.

The Consumer Advocate contends that: (1) the commission may, at its discretion, establish a framework whereby the only path by which a QF can receive a contract is as a successful bidder, if a utility's need is to be addressed through a competitive biding process (the Consumer Advocate recommends this approach); (2) the commission may, at its discretion, establish a framework by which QFs will have opportunities to contract with utilities outside of (and between) competitive bidding processes (the Consumer Advocate recommends against this approach); (3) each state commission has considerable discretion to define how avoided costs are to be calculated, and the terms under which purchases from QFs will occur; (4) the commission must allow QFs a non-discriminatory opportunity to supply any resource needed that a utility intends to fill (i.e., through competitive bidding, direct procurement, self-building, or otherwise); and (5) the Federal Energy Regulatory Commission ("FERC") views

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[50]HAR § 6-74-15(c) provides:

> If the electric utility and qualifying facility fail to reach an agreement on the rate or terms of purchase within seventy-five days after the qualifying facility first offers to sell energy or capacity to the electric utility, the electric utility, within fourteen days, shall submit a petition to the commission requesting a hearing on the matter. If the electric utility fails to submit the petition within the prescribed time period, the qualifying facility may petition the commission for a hearing on the matter. Upon the application of the electric utility or the qualifying facility and for good cause, the commission may waive or modify the time periods prescribed in this subsection.

(Emphasis added.)

competitive bidding as a preferred mechanism for establishing the price (i.e., the avoided cost rate) at which a QF (if a winner in that solicitation) may sell to a utility.[51] In support thereto, the Consumer Advocate cites to and discusses decisions by FERC, the Wyoming Public Service Commission, Oklahoma Supreme Court (Pub. Serv. Co. of Okla. v. State of Okla, 115 P.3d 861 (Okla. 2005)), and Colorado Supreme Court (Phoenix Power Partners, L.P. v. Colorado Pub. Util. Comm'n, 952 P.2d 359 (Colo. 1998)).[52]

Based on its analysis, the Consumer Advocate concludes:

1. The commission is authorized under PURPA to require that a QF participate and submit a bid in a competitive bidding process in order to preserve its PURPA rights.

2. The price at which the QF proposes to sell power to a utility will establish the avoided costs should the QF be selected as the winning bidder.

3. If a QF does not submit a bid, or is not selected as the winning bidder, the QF is not entitled to a contract with the utility under PURPA.

4. The self-build option is the winning bid, which establishes the avoided costs, taking into account all relevant non-price factors. The QFs, having lost the bidding process, will not have the right to sell their output as their proposed rates are higher than avoided costs.

See Consumer Advocate's Comments, Section II(B), at 6 - 14; and Section V, at 47.

HREA states that:

1. The commission is not authorized under PURPA and any other applicable laws to require that a QF must participate and submit a bid in a competitive bidding process established by the commission in order to preserve certain PURPA rights of the QF.

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[51]Consumer Advocate's Comments, Section II(A), at 5 - 6.

[52]The FERC decision was cited by the commission in Decision and Order No. 22588, at 23 n.29, while the Wyoming Public Service Commission decision was cited by the HECO Utilities.

2. HREA has long been an advocate of a competitive bidding process, which could include both QFs and non-QFs, to establish the utility's avoided cost. However, if the commission implements competitive bidding to establish avoided cost, HREA is concerned about the potential impact on existing PURPA projects. Specifically, if a new lower avoided cost payment is applied to existing projects, it is likely that the financial viability of these existing projects will be jeopardized.

3. If the QF does not prevail in the competitive bidding process, the utility's avoided cost will be set by the winning bidder.

4. If the winning bidder is the utility's self-build option, the utility's self-build option will set the new avoided cost. Nonetheless, a losing QF will not forego its PURPA rights, including the right to propose its losing proposal or another proposal at a later date. HREA recommends that the QF be given the right to match the utility's self-build proposal.

The commission, upon careful review and consideration of the foregoing, adopts the following language in Part VIII of the Framework (a new part) to govern the treatment of PURPA QFs in the competitive bidding process:[53]

VIII. QUALIFYING FACILITIES

[1.]**(A.)** For any resource to which the competitive bidding requirement does not apply (due to waiver or exemption), the utility retains its traditional obligation to **offer to** purchase capacity and energy from a QF at avoided cost**[.] upon reasonable terms and conditions approved by the Commission.**

[2.]**(B.)** For any resource to which the competitive bidding requirement does apply**[:], the utility shall apply to the commission to waive or modify the time periods described in Hawaii Administrative Rules § 6-74-15(c) (1998)**

[53]In this context, brackets represent material that is deleted from footnote 31 of Decision and Order No. 22588, while underscoring represents material that is added to footnote 31.

for the utility to negotiate with a QF pursuant to the applicable provisions of Hawaii Administrative Rules § 6-74-15(c) (1998), and upon approval of the commission, the utility's obligation to negotiate with a QF shall be deferred pending completion of the competitive bidding process.

[3.]**(1.)** If a non-QF is the winning bidder:

[A.]**(a.)** A QF will have no PURPA right to supply the resource provided by a non-QF winning bidder.

[B.]**(b.)** If a non-QF winner [did] **does** not supply all the capacity needed by the utility, or if a need develops between RFPs[,] **that will not be satisfied by an RFP due to a waiver or exemption,** a QF, upon submitting a viable offer, is permitted to exercise its PURPA rights to sell at avoided cost. The commission's determination of avoided cost will be bounded by the price level established by the winning non-QF.

[4.]**(2.)** Where [there is no winning bidder because the utility's self-build option is the most attractive option,] **the winning bidder is the utility's self-build option,** a QF [is permitted to exercise its PURPA rights by making a viable offer to meet or beat the utility's self-build option.] **will not have a PURPA right to supply the resource provided by the utility's self-build option.**

[5.]**(3.)** If a QF is the winning bidder, the QF has the right to sell to the electric utility at its bid price[.]**, unless the price is modified in the contract negotiations that are part of the bidding process.**

See Framework, Part VIII.

In the commission's view, Part VIII of the Framework recognizes and preserves a QF's PURPA right to sell power to an electric utility at avoided cost, in the competitive bidding context.[54]

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[54]On September 11, 2006, the HECO Utilities, the Consumer Advocate, and HREA submitted their respective comments on the PURPA QF issue. Thereafter, on October 20, 2006, FERC issued Order No. 688, which adopts final regulations that implement a new Section 210(m) to PURPA (i.e., Section 1253(a) of the Energy Policy Act of 2005). See 16 U.S.C. § 824a-3; and New PURPA Section 210(m) Regulations, Applicable to Small Power Production and Cogeneration Facilities, Docket No. RM06-10-000, FERC Order No. 688, issued October 20, 2006. Section 210(m) of PURPA, and by extension FERC's new regulations that implement Section 210(m), governs the termination of an electric utility's obligation to purchase energy from QFs, upon a finding by FERC that QFs have non-discriminatory access to: (1) independently administered, auction-based day-ahead and real-time wholesale markets for electric energy and wholesale markets for long-term sales of capacity or electric energy; (2) transmission and interconnection services that are provided by a FERC-approved regional transmission entity pursuant to an open-access transmission tariff that affords non-discriminatory treatment to all customers, and competitive wholesale markets that provide a meaningful opportunity to sell capacity and energy on a short- term and long-term basis; or (3) wholesale markets for the sale of capacity and electric energy that are at a minimum of comparable competitive quality as those described in items 1 and 2, above. 16 U.S.C. § 824a-3; and 18 C.F.R. §§ 292.303, 292.309 - 292.314. Section 292.310 of FERC's new regulations outlines the procedures for an electric utility to file an application with FERC in the event the utility seeks to terminate the PURPA obligation to purchase requirement on a service territory-wide basis. 18 C.F.R. § 292.310.

The commission finds that Part VIII of its Framework as adopted herein today by this Decision and Order is unaffected by FERC's Order No. 688 at this time.

IX.

Orders

THE COMMISSION ORDERS:

1. The attached Framework for Competitive Bidding is adopted, effective from the issuance of this Decision and Order.

2. Within ninety days from the issuance of the attached Framework, the HECO Utilities and KIUC shall file in this docket their proposed tariffs containing procedures for interconnection and transmission upgrades for the commission's review and approval, as mandated by Part III.B.6 and Part IV.I.4 of the attached Framework. The other parties in this docket may file comments on the electric utilities' proposed tariffs. Any such comments shall be filed within thirty days from the filing date of the proposed tariffs.

3. Within one hundred and eighty (180) days from the issuance of the attached Framework, or prior to the commencement of any competitive bidding process under this Framework, as mandated by Part III.A.4 of the attached Framework, whichever comes first, the HECO Utilities and KIUC shall file in this docket their proposed Codes of Conduct for the commission's review and approval. The other parties in this docket may file comments on the electric utilities' proposed Codes of Conduct. Any such comments shall be filed within thirty days from the filing date of the proposed Codes of Conduct.

DONE at Honolulu, Hawaii DEC - 8 2006.

PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By _____
Carlito P. Caliboso, Chairman

By _____
John E. Cole, Commissioner

APPROVED AS TO FORM:

_____
Michael Azama
Commission Counsel

.03-0372.eh

EXHIBIT A

FRAMEWORK FOR COMPETITIVE BIDDING
December 8, 2006

STATE OF HAWAII
PUBLIC UTILITIES COMMISSION

Exhibit A

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STATE OF HAWAII
PUBLIC UTILITIES COMMISSION

FRAMEWORK FOR COMPETITIVE BIDDING
December 8, 2006

I. DEFINITIONS

As used in this Framework, unless the context clearly requires otherwise:

"Approved IRP" means an electric utility's IRP that has been approved by the Commission in the utility's IRP proceeding. As of the effective date of this Framework, the status of each utility's IRP is as follows: (1) on October 28, 2005, Hawaiian Electric Company, Inc. filed its 3rd IRP in In re Hawaiian Elec. Co., Inc., Docket No. 03-0253; (2) Maui Electric Company, Ltd. is scheduled to file its 3rd IRP by April 30, 2007, in In re Maui Elec. Co., Ltd., Docket No. 04-0077; (3) Hawaii Electric Light Company, Inc. is scheduled to file its 3rd IRP by December 29, 2006, in In re Hawaii Elec. Light Co., Inc., Docket No. 04-0046; and (4) on June 20, 2006, the Commission opened a proceeding for Kauai Island Utility Cooperative's 3rd IRP in In re Kauai Island Util. Coop., Docket No. 2006-0165.

"CIP Approval Requirements" means the procedure set forth in the Commission's General Order No. 7, Standards for Electricity Utility Service in the State of Hawaii, Paragraph 2.3(g), as modified by In re Kauai Island Util. Coop., Docket No. 03-0256, Decision and Order No. 21001, filed on May 27, 2004, and In re Hawaiian Elec. Co., Inc., Hawaii Elec. Light Co., Inc., and Maui Elec. Co., Ltd., Docket No. 03-0257, Decision and Order No. 21002, filed on May 27, 2004. "In general, [the] commission's analysis of capital expenditure applications involves a review of whether the project and its costs are reasonable and consistent with the public interest, among other factors. If the commission approves the [electric] utility's application, the commission in effect authorizes the utility to commit funds for the project, subject to the proviso that 'no part of the project may be included in the utility's rate base unless and until the project is in fact installed, and is used and useful for public utility purposes.'" Decision and Order No. 21001, at 12; and Decision and Order No. 21002, at 12.

"Code of Conduct" means a written code developed by the host electric utility and approved by the Commission to ensure the fairness and integrity of the competitive bidding process, in particular where the host utility or its affiliate seeks to advance its own resource proposal in response to an RFP. The "Code of Conduct" is more fully described in Part IV.H.9.c of the Framework.

"Commission" means the Public Utilities Commission of the State of Hawaii.

"Competitive bid" or "competitive bidding" means the mechanism established by this Framework for acquiring a future energy generation resource or a block of generation resources by an electric utility.

"Consumer Advocate" means the Division of Consumer Advocacy of the Department of Commerce and Consumer Affairs, State of Hawaii.

"Contingency Plan" means an electric utility's plan to provide either temporary or permanent generation or load reduction programs to address a near-term need for capacity as a result of an actual or expected failure of an RFP process to produce a viable project proposal, or of a project selected in an RFP. The utility's Contingency Plan may be different from the utility's Parallel Plan and the utility's bid. The term "utility's bid," as used herein, refers to a utility's proposal advanced in response to a need that is addressed by its RFP.

"Electric utility" or "utility" means a provider of electric utility service that is regulated by and subject to the Commission's jurisdiction pursuant to Chapter 269, Hawaii Revised Statutes.

"Framework" means the Framework for Competitive Bidding dated December 8, 2006, adopted by the Commission in Docket No. 03-0372.

"Independent Observer" means the neutral person or entity retained by the electric utility to monitor the utility's competitive bidding process, and to advise the utility and Commission on matters arising out of the competitive bidding process, as described in Part III.C of the Framework.

"IPP" means an independent power producer that is not subject to the Commission's regulation or jurisdiction as a public utility.

"IRP" means an electric utility's Integrated Resource Plan that has been submitted to the Commission for review and approval in the utility's IRP proceeding, in accordance with the Commission's IRP Framework. The overall goal of integrated resource planning is the identification of the resources or the mix of resources for meeting near and long-term customer energy needs in an efficient and reliable manner at the lowest reasonable cost. Each electric utility is responsible for developing an IRP that meets the energy needs of its customers. The IRP Framework requires each electric utility to develop a long-range, twenty (20)-year plan and a medium-range five (5)-year action plan to be submitted on a three (3)-year planning cycle for the Commission's review and approval. The IRP process is a vehicle for the Commission, the electric utilities, energy stakeholders, and the public to understand and influence the planning process involved in identifying and evaluating the mix of demand-side and supply-side energy resources needed to meet near and long-term energy needs in an efficient and reliable manner at the lowest reasonable cost.

"IRP Framework" means the Commission's Framework for Integrated Resource Planning, dated May 22, 1992, as amended by In re Public Util. Comm'n, Docket No. 05-0075, Decision and Order No. 22490, filed on May 26, 2006.

"Parallel Plan" means the generating unit plan (comprised of one or multiple generation resources) that is pursued by the electric utility in parallel with a third-party project selected in an RFP until there is reasonable assurance that the third-party project will reach commercial operation, or until such action can no longer be justified to be reasonable. The utility's Parallel Plan unit(s) may be different from that proposed in the utility's bid. The term "utility's bid," as used herein, refers to a utility's proposal advanced in response to a need that is addressed by its RFP.

"PPA" means a power purchase agreement or contract to purchase firm capacity, energy, or both, from an electric utility, pursuant to the terms of this Framework.

"PURPA" means the Federal Public Utility Regulatory Policies Act of 1978, as amended.

"QF" means a cogeneration facility or a small power production facility that is a qualifying facility under Subpart B of 18 Code of Federal Regulations §§ 292.201 – 292.211. See also 18 Code of Federal Regulations § 291.201(b)(1) (definition of "qualifying facility").

"RFP" means a written request for proposal issued by the electric utility to solicit bids from interested third-parties, and where applicable from the utility or its affiliate, to supply a future generation resource or a block of generation resources to the utility pursuant to the competitive bidding process.

II. CONTEXT FOR COMPETITIVE BIDDING

A. USE OF COMPETITIVE BIDDING

1. This Framework applies to electric utilities regulated by and subject to the Commission's jurisdiction pursuant to Chapter 269, Hawaii Revised Statutes.

2. A determination shall be made by the Commission in a utility's IRP proceeding as to whether a competitive bidding process shall be used to acquire a future generation resource or a block of generation resources.

3. Competitive bidding, unless the Commission finds it to be unsuitable, is established as the required mechanism for acquiring a future generation resource or a block of generation resources, whether or not such resource has been identified in a utility's IRP. The basis for such a finding shall be explained by the utility in its IRP, and the determination shall be made by

the Commission in its review of the utility's IRP. See Part II.C, below. The following conditions and possible exceptions apply:

a. Competitive bidding will benefit Hawaii when it: (i) facilitates an electric utility's acquisition of supply-side resources in a cost-effective and systematic manner; (ii) offers a means by which to acquire new generating resources that are overall lower in cost or better performing than the utility could otherwise achieve; (iii) does not negatively impact the reliability or unduly encumber the operation or maintenance of Hawaii's unique island electric systems; (iv) promotes electric utility system reliability by facilitating the timely acquisition of needed generation resources and allowing the utility to adjust to changes in circumstances; and (v) is consistent with IRP objectives.

b. Under certain circumstances, to be considered by the Commission in the context of an electric utility's request for waiver under Part II.A.4, below, competitive bidding may not be appropriate. These circumstances include: (i) when competitive bidding will unduly hinder the ability to add needed generation in a timely fashion; (ii) when the utility and its customers will benefit more if the generation resource is owned by the utility rather than by a third-party (for example, when reliability will be jeopardized by the utilization of a third-party resource); (iii) when more cost-effective or better performing generation resources are more likely to be acquired more efficiently through different procurement processes; or (iv) when competitive bidding will impede or create a disincentive for the achievement of IRP goals, renewable energy portfolio standards or other government objectives and policies, or conflict with requirements of other controlling laws, rules, or regulations.

c. Other circumstances that could qualify for a waiver include: (i) the expansion or repowering of existing utility generating units; (ii) the acquisition of near-term power supplies for short-term needs; (iii) the acquisition of power from a non-fossil fuel facility (such as a waste-to-energy facility) that is being installed to meet a governmental objective; and (iv) the acquisition of power supplies needed to respond to an emergency situation.

d. Furthermore, the Commission may waive this Framework or any part thereof upon a showing that the waiver will likely result in a lower cost supply of electricity to the utility's general body of ratepayers, increase the reliable supply of electricity to the utility's general body of ratepayers, or is otherwise in the public interest.

e. This Framework does not apply to: (i) the three utility projects currently being developed: Hawaiian Electric Company, Inc.'s Campbell Industrial Park CT-1, Hawaii Electric Light Company, Inc.'s Keahole ST-7, and Maui Electric Company, Ltd.'s Maalaea M-18; (ii) offers to sell energy on an as-available basis by non-fossil fuel producers that were submitted to an electric utility before this Framework was adopted; and (iii) offers to sell firm energy and/or capacity by non-fossil fuel producers that were submitted to an electric utility before this Framework was adopted, or that resulted from negotiations with respect to offers to sell energy on an as-available basis by non-fossil fuel producers that were submitted to an electric utility before this Framework was adopted; provided that negotiations with respect to such firm energy and/or capacity offers are concluded no later than December 31, 2007.

f. This Framework also does not apply to: (i) generating units with a net output available to the utility of 1% or less of a utility's total firm capacity, including that of independent power producers, or with a net output of 5 MW or less, whichever is lower (for systems that cover more than one island (i.e., Maui Electric Company, Ltd.'s system, which has generation on Maui, Molokai and Lanai), the system firm capacity will be determined on a consolidated basis); (ii) distributed generating units at substations and other sites installed by the utility on a temporary basis to help address reserve margin shortfalls; (iii) customer-sited, utility-owned distributed generating units that have been approved by the Commission in accordance with the requirements of Decision and Order No. 22248, issued January 27, 2006, as clarified by Order No. 22375, issued April 6, 2006 in Docket No. 03-0371; and (iv) renewable energy or new technology generation projects under 1 MW installed for "proof-of-concept" or demonstration purposes.

g. This Framework also does not apply to qualified facilities and non-fossil fuel producers with respect to: (i) power purchase agreements for as-available energy; provided that an electric utility is not required to offer a term for such power purchase agreements that exceeds five years if it has a bidding program that includes as-available energy facilities; (ii) power purchase agreements for facilities with a net output available to the utility of 2 MW or less; (iii) power purchase agreement extensions for three years or less on substantially the same terms and conditions as the existing power purchase agreements and/or on more favorable terms and conditions; (iv) power purchase agreement modifications to acquire additional firm capacity or firm capacity from an existing facility, or from a facility that is modified without a major air

permit modification; and (v) renegotiations of power purchase agreements in anticipation of their expiration, approved by the Commission.

h. When a competitive bidding process will be used to acquire a future generation resource or a block of generation resources, the generating units acquired under a competitive bidding process must meet the needs of the utility in terms of the reliability of the generating unit, the characteristics of the generating unit required by the utility, and the control the utility needs to exercise over operation and maintenance in order to reasonably address system integration and safety concerns.

4. The procedure for seeking a waiver is as follows:

a. Applications for waivers, and transition to competitive bidding requirements for new generation projects.

(i) For proposed generation projects included in, or consistent with, IRPs approved by the Commission prior to the effective date of this Framework, the electric utility shall file an application for waiver with the Commission, as soon as practicable, consistent with Part II.A.4.a(iv), below.

(ii) For proposed generation projects included in, or consistent with, the IRP filed for Commission approval in In re Hawaiian Elec. Co., Inc., Docket 03-0253, the electric utility shall file any waiver request no later than sixty (60) days following a Commission order approving the IRP.

(iii) For all proposed generation projects included in, or consistent with, IRPs that have not yet been filed with the Commission for approval as of the effective date of this Framework, any waiver request shall accompany the filing of the proposed IRP for the Commission's approval.

(iv) An electric utility that seeks a waiver shall take all steps reasonably required to submit its application for waiver as soon as practicable such that, in the event the Commission denies the request, sufficient time remains to conduct competitive bidding without imprudently risking system reliability.

b. In no event shall a Commission decision granting a waiver be construed as determinative of whether an electric utility acted prudently in the matter.

5. Exemption - ownership structure of an electric utility. Upon a showing that an entity has an ownership structure in which there is no substantial difference in economic interests between its owners and its customers, such that the electric utility has no disincentive to pursue new generation projects through competitive bidding, the Commission will exempt such entity from this Framework.

B. SCOPE OF COMPETITIVE BIDDING

1. An electric utility's IRP shall specify the proposed scope of the RFP for any specific generation resource or block of generation resources that the IRP states will be subject to competitive bidding.

2. Competitive bidding shall enable the comparison of a wide range of supply-side options, including PPAs, utility self-build options, turnkey arrangements (i.e., build and transfer options), and tolling arrangements where practical.

3. Each electric utility shall take steps to provide notice of its RFPs, and to encourage participation from a full range of prospective bidders. PURPA qualifying facilities, IPPs, the host utility, and its affiliates, and other utilities shall be eligible to participate in any supply-side RFP.

4. Competitive bidding processes may vary by resource type, provided those processes are consistent with this Framework. For instance, solicitation processes for distributed generation facilities may be different from those for central station generating supplies. An electric utility may establish a separate procurement process (such as a "set aside" or separate RFP process) to acquire as-available or firm capacity from renewable generating facilities.

5. RFP processes shall be flexible, and shall not include unreasonable restrictions on sizes and types of projects considered, taking into account the appropriate sizes and types identified in the IRP process.

C. RELATIONSHIP TO INTEGRATED RESOURCE PLANNING

1. The Commission's IRP Framework applicable to each electric utility shall continue to be used to set the strategic direction of resource planning by the electric utilities. In order for competitive bidding to be effectively and efficiently integrated with a utility's IRP, stakeholders must work

cooperatively to identify and adhere to appropriate timelines, which may need to be expedited.

2. This Framework is intended to complement the Commission's IRP Framework.

3. A determination shall be made by the Commission in an IRP proceeding as to whether a competitive bidding process shall be used to acquire a generation resource or a block of generation resources that is included in the IRP. Actual competitive bidding for IRP-designated resources will normally occur after the IRP is approved, through an RFP, which is consistent with the IRP approved by the Commission. However, during the transition into competitive bidding processes for new generation under this Framework, if the IRP in effect was approved prior to the effective date of this Framework, a utility shall initiate competitive bidding (or request a waiver under Part II.A.4) as may be required by this Framework. As required by the IRP Framework, such projects must be identified in or consistent with the IRP in effect at the time.

4. Integration of competitive bidding into IRP. The general approach to integration has four parts, in sequence:

   a. The electric utility conducts an IRP process, culminating in an IRP that identifies a preferred resource plan (including capacity, energy, timing, technologies, and other preferred attributes). This IRP shall identify those resources for which the utility proposes to hold competitive bidding, and those resources for which the utility seeks a waiver from competitive bidding, and shall include an explanation of the facts supporting a waiver, based on the waiver criteria set forth in Part II.A.3, above.

   b. The Commission approves, modifies, or rejects the IRP, including any requests for waiver, under the IRP Framework and this Framework.

   c. The electric utility conducts a competitive bidding process, consistent with the IRP; such process shall include the advance filing of a draft RFP with the Commission, which shall be consistent with the IRP.

   d. The electric utility selects a winner from the bidders. (<u>But see</u> Part II.C.6, below, concerning the process when there are no bidders worth choosing.).

5. An evaluation of bids in a competitive bidding process may reveal desirable projects that were not included in an Approved IRP.

These projects may be selected if it can be demonstrated that the project is consistent with an Approved IRP and that such action is expected to benefit the utility and its ratepayers.

6. An evaluation of bids in a competitive bidding process may reveal that the acquisition of any of the resources in the bid will not assist the utility in fulfilling its obligations to its ratepayers. In such a case, the utility may determine not to acquire such resources and shall notify the Commission accordingly. Such notification shall include: (a) an explanation of why the competitive bidding process failed to produce a viable project; and (b) a description of what actions the electric utility intends to take to replace the resource sought through the unsuccessful competitive bidding process.

D. MITIGATION OF RISKS ASSOCIATED WITH COMPETITIVE BIDDING

1. To carry out its competitive bidding obligations consistently with its resource sufficiency obligations, the electric utility must conduct, or consider conducting, three types of activities: self-build, parallel planning, and contingency planning. The utility's self-build obligation is addressed in Parts VI.A.1 and VI.C, below. The electric utility's parallel planning and contingency planning activities are discussed in Parts II.D.2 to II.D.4, below.

2. In consideration of the isolated nature of the island utility systems, the utility may use a Parallel Plan option to mitigate the risk that an IPP's option may fail. Under this Parallel Plan option, the utility may continue to proceed with its Parallel Plan until it is reasonably certain that the awarded IPP project will reach commercial operation, or until such action can no longer be justified to be reasonable. The electric utility shall use prudent electric utility practices to determine the nature, amount, and timing of the parallel planning activities, and take into account (without limitation) the cost of parallel planning and the probability of third-party failure. The electric utility's Parallel Plan unit(s) may differ from that proposed in the electric utility's bid. For each project that is subject to competitive bidding, the electric utility shall submit a report on the cost of parallel planning upon the Commission's request.

3. The electric utility may require bidders (subject to the Commission's approval with other elements of a proposed RFP) to offer the utility the option to purchase the project under certain conditions or in the event of default by the seller (i.e., the bidder), subject to commercially reasonable payment terms.

4. The utility's Contingency Plan need not be the resource identified as the preferred resource in its Approved IRP Plan.

III. ROLES IN COMPETITIVE BIDDING

A. ELECTRIC UTILITY

1. The role of the host electric utility in the competitive bidding process shall include:

   a. Designing the solicitation process, establishing evaluation criteria consistent with its overall IRP objectives, and specifying timelines;

   b. Designing the RFP documents and proposed forms of PPAs and other contracts;

   c. Implementing and managing the RFP process, including communications with bidders;

   d. Evaluating the bids received;

   e. Selecting the bids for negotiations based on established criteria;

   f. Negotiating contracts with selected bidders;

   g. Determining, where and when feasible, the interconnection facilities and transmission upgrades necessary to accommodate new generation;

   h. Competing in the solicitation process with a self-build option, unless a waiver is granted; and

   i. Providing the Independent Observer with all requested information.

2. In designing each competitive bidding process, each electric utility shall: (a) take prudent steps to obtain information on the experiences of similarly-situated utilities and utilities that have conducted competitive bidding processes to address similar needs; and (b) take prudent steps to take full advantage of available industry sources of related information.

3. Access to Utility Sites. The utility shall consider, on a case-by-case basis before an RFP is issued, offering one or several utility-owned or controlled sites to bidders in each competitive bidding process. The utility shall consider such factors as:

a. The anticipated specific non-technical terms of potential proposals. An example of one factor that will need to be examined is whether benefits will be expected from a "turnkey" project that the utility will or may eventually own and operate.

b. The feasibility of the installation. Examples of the factors that may need to be examined in order to evaluate the feasibility of the installation may include, but are not be limited to the following:

   i. Specific physical and technical parameters of anticipated non-utility installations, such as the technology that may be installed, space and land area requirements, topographic, slope and geotechnical constraints, fuel logistics, water requirements, number of site personnel, access requirements, waste and emissions from operations, noise profile, electrical interconnection requirements, and physical profile; and

   ii. How the operation, maintenance, and construction of each installation will affect factors such as security at the site, land ownership issues, land use and permit considerations (e.g., compatibility of the proposed development with present and planned land uses), existing and new environmental permits and licenses, impact on operations and maintenance of existing and future facilities, impact to the surrounding community, change in zoning permit conditions, and safety of utility personnel.

c. The utility's anticipated future use of the site. Examples of why it may be beneficial for the utility to maintain site control may include, but are not limited to the following: (i) to ensure that power generation resources can be constructed to meet system reliability requirements; (ii) to retain flexibility for the utility to perform crucial parallel planning for a utility owned option to back-up the unfulfilled commitments, if any, of third-party developers of generation; and (iii) to retain the flexibility for the utility to acquire the unique efficiency gains of combined-cycle conversions and repowering projects of existing utility simple-cycle combustion turbines and steam fired generating facilities, respectively.

d. The effect on competitive forces of denying bidders the ability to use the site, taking into account whether the unavailability of adequate sites for non-utility bidders gives the electric utility a competitive advantage.

e. Where the utility has chosen not to offer a site to a third-party, the electric utility shall present its reasons, specific to the project and sites at issue, in writing to the Independent Observer and the Commission.

4. The utility shall submit to the Commission for review and approval (subject to modification if necessary), a Code of Conduct described in Part IV.H.9.c, below, prior to the commencement of any competitive bid process under this Framework.

B. HAWAII PUBLIC UTILITIES COMMISSION

1. The primary role of the Commission is to ensure that: (a) each competitive bidding process conducted pursuant to this Framework is fair in its design and implementation so that selection is based on the merits; (b) projects selected through competitive bidding processes are consistent with the utility's Approved IRP; (c) the electric utility's actions represent prudent practices; and (d) throughout the process, the utility's interests are aligned with the public interest even where the utility has dual roles as designer and participant.

2. The Commission will review, and at its option, approve or modify, each proposed RFP before it is issued, including any proposed form of contracts and other documentation that will accompany the RFP.

3. The Commission shall be the final arbiter of disputes that arise among parties in relation to a utility's competitive bidding process, to the extent described in Part V, below.

4. The Commission shall review, and approve or reject, the contracts that result from competitive bidding processes conducted pursuant to this Framework, in a separate docket upon application by the utility in which the expedited process in Part III.B.8 shall not apply. In reviewing such contracts, the Commission may establish review processes that are appropriate to the specific circumstances of each solicitation, including the time constraints that apply to each commercial transaction.

5. If the utility identifies its self-build or turnkey project as superior to bid proposals, the utility shall seek Commission approval in keeping with established CIP Approval Requirements.

6. The Commission shall review and approve (and modify if necessary), the electric utility's tariffs for interconnection and transmission upgrades required by Part IV.I of this Framework.

7. The Commission shall review any complaint that the electric utility is not complying with the Framework, pursuant to Part V.

8. Timely Commission review, approval, consent, or other action described in this Framework is essential to the efficient and effective execution of this competitive bidding process. Accordingly, to expedite Commission action in this competitive bidding process, whenever Commission review, approval, consent, or action is required under this Framework, the Commission may do so in an informal expedited process. The Commission hereby authorizes its Chairman, or his designee (which designee, may be another Commissioner, a member of the Commission staff, Commission hearings officer, or a Commission hired consultant), in consultation with other Commissioners, Commission staff, and the Independent Observer, to take any such action on behalf of the Commission.

C. INDEPENDENT OBSERVER

1. An Independent Observer is required whenever the utility or its affiliate seeks to advance a project proposal (i.e., in competition with those offered by bidders) in response to a need that is addressed by its RFP, or when the Commission otherwise determines. An Independent Observer will monitor the competitive bidding process and will report on the progress and results to the Commission, sufficiently early so that the Commission is able to address any defects and allow competitive bidding to occur in time to meet capacity needs. Any interaction between a utility and its affiliate during the course of a solicitation process, beginning with the preparation of the RFP, shall be closely monitored by the Independent Observer. Specific tasks to be performed by the Independent Observer shall be identified by the utility in its proposed RFP and as may be required by the Commission.

2. Independent Observer obligations. The Independent Observer will have duties and obligations in two areas: Advisory and Monitoring.

   a. Advisory. The Independent Observer shall:

      (i) Certify to the Commission that at each of the following steps, the electric utility's judgments created no unearned advantage for the electric utility or any affiliate:
         (1) Pre-qualification criteria;
         (2) RFP;
         (3) Model PPA to be attached to the RFP;
         (4) Selection criteria;
         (5) Evaluation of bids; and

(6) Final decision to purchase power or proceed with self-build option.

(ii) Advise the electric utility on its decision-making during, and with respect to, each of the electric utility's actions listed in the preceding item;

(iii) Report immediately to the electric utility's executive in charge of ensuring compliance with this Framework, and the Commission, any deviations from the Framework or violations of any procurement rules;

(iv) After the electric utility's procurement selection is completed, provide the Commission with:

(1) An overall assessment of whether the goals of the RFP were achieved, such goals to include without limitation the attraction of a sufficient number of bidders and the elimination of actual or perceived utility favoritism for its own or an affiliate's project; and

(2) Recommendations for improving future competitive bidding processes.

(v) Be available to the Commission as a witness if required to evaluate a complaint filed against an electric utility for non-compliance with this Framework, or if required in a future rate case if questions of prudence arise.

b. Monitoring. The Independent Observer shall:

(i) Monitor all steps in a competitive bidding process, beginning with the preparation of the RFP, or at such earlier time as determined by the Commission;

(ii) Monitor communications (and communications protocols) with bidders;

(iii) Monitor adherence to Codes of Conduct;

(iv) Monitor contract negotiations with bidders;

(v) Monitor all interactions between the electric utility and its affiliate, during all events affecting a solicitation process, if the affiliate may be a bidder; and

(vi) Report to the Commission on monitoring results during each stage of the competitive process, sufficiently early so that the Commission can correct defects or eliminate uncertainties without endangering project milestones.

3. The Independent Observer shall have no decision-making authority, and no obligation to resolve disputes, but may offer to mediate between disputing parties.

4. The Independent Observer shall provide comments and recommendations to the Commission, at the Commission's request, to assist in resolving disputes or in making any required determinations under this Framework.

5. Independent Observer qualifications. The Independent Observer shall be qualified for the tasks the observer must perform. Specifically, the Independent Observer shall:

   a. Be knowledgeable about, or be able rapidly to absorb knowledge about, any unique characteristics and needs of the electric utility;

   b. Be knowledgeable about the characteristics and needs of small, non-interconnected island electric grids, and be aware of the unique challenges and operational requirements of such systems;

   c. Have the necessary experience and familiarity with utility modeling capability, transmission system planning, operational characteristics, and other factors that affect project selection;

   d. Have a working knowledge of common PPA terms and conditions, and the PPA negotiations process;

   e. Be able to work effectively with the electric utility, the Commission, and its staff during the bid process; and

   f. Be able to demonstrate impartiality.

6. Selection and contracting. The electric utility shall: (a) identify qualified candidates for the role of Independent Observer (and also shall consider qualified candidates identified by the Commission and prospective participants in the competitive bidding process); (b) seek and obtain Commission approval of its final list of qualified candidates; and (c) select an Independent Observer from among the Commission-approved qualified candidates. The electric utility's contract with the Independent Observer shall be acceptable to the Commission, and provide, among other matters, that the Independent Observer: (a) report to the Commission and carry out such tasks as directed by the Commission,

including the tasks described in this Framework; (b) cannot be terminated and payment cannot be withheld without the consent of the Commission; and (c) can be terminated by the Commission without the utility's consent, if the Commission deems it to be in the public interest in the furtherance of the objectives of this Framework to do so. The utility may recover prudently incurred Independent Observer costs from its customers upon approval of the Commission in a rate case or other appropriate proceeding, and may defer the costs prudently incurred for the Independent Observer (i.e., deferred accounting).

7. As part of the RFP design process, the utility shall develop procedures to be included in the RFP by which any participant in the competitive bidding process may present to the Commission, for review and resolution, positions that differ from those of the Independent Observer (i.e., in the event the Independent Observer makes any representations to the Commission upon which the participant does not agree).

IV. THE REQUEST FOR PROPOSALS PROCESS

A. GENERAL

1. Competitive bidding shall be structured and implemented in a way that facilitates an electric utility's acquisition of supply-side resources identified in a utility's IRP in a cost-effective and systematic manner, consistent with state energy policy. All costs and benefits incurred or received by the utility and its customers shall be taken into account in the bid evaluation and selection process.

2. Competitive bidding shall be structured and implemented in a flexible and efficient manner that promotes electric utility system reliability by facilitating the timely acquisition of needed resources and allowing the utility to adjust to changes in circumstances.

   a. The implementation of competitive bidding cannot be allowed to negatively impact reliability of the electric utility system.

   b. The generating units acquired under a competitive bidding process must meet the needs of the utility in terms of the reliability of the generating unit, the characteristics of the generating unit required by the utility, and the control the utility needs to exercise over operation and maintenance in order to minimize system integration concerns.

3. The competitive bidding process shall ensure that proposals and bidders are judged on the merits, without being unduly burdensome to the electric utilities and the Commission.

   a. The competitive bidding process shall include an RFP and supporting documentation by which the utility sets forth the requirements to be fulfilled by bidders and describes the process by which it will: (i) conduct its solicitation; (ii) obtain consistent and accurate information on which to evaluate bids; (iii) implement a consistent and equitable evaluation process; and (iv) systematically document its determinations. The RFP shall also describe the role of the Independent Observer and bidders' opportunities for challenges and for dispute resolution.

   b. When a utility advances its own project proposal (i.e., in competition with those offered by bidders) or accepts a bid from an affiliate, the utility shall take all reasonable steps, including any steps required by the Commission, to mitigate concerns over an unfair or unearned competitive advantage that may exist or reasonably be perceived by other bidders or stakeholders.

4. If an IPP, turnkey, or affiliate proposal is selected as a result of the RFP process, one or more contracts are the expected result. Proposed forms of PPAs and other contracts that may result from the RFP process (e.g., PPA for firm capacity, PPA for as-available energy, turnkey contract, etc.) shall be included with each RFP. The RFP shall specify whether any opportunity exists to propose or negotiate changes to the proposed form of PPA.

B. DESIGN OF THE COMPETITIVE BIDDING SOLICITATION PROCESS

1. The competitive bidding solicitation process shall include the following:

   a. Design of the RFP and supporting documents;

   b. Issuance of the RFP;

   c. Development and submission of proposals by bidders;

   d. A "multi-stage evaluation process" to reduce bids down to a short list or "award group" (i.e., a process that includes, without limitation: (i) receipt of the proposals; (ii) completeness check; (iii) threshold or minimum requirements evaluation; (iv) initial evaluation including price screen/non-price assessment; (v) selection of a short list; (vi) detailed evaluation or portfolio

development; and (vii) selection of award group for contract negotiation);

e. Contract negotiations (when a third-party bid is selected); and

f. Commission approval of any resulting contract.

2. The RFP shall identify any unique system requirements and provide information regarding the requirements of the utility, important resource attributes, and criteria used for the evaluation. For example, if the utility values dispatchability or operating flexibility, the RFP shall: (a) request that a bidder offer such an option; and (b) explain how the utility will evaluate the impacts of dispatchability or operational flexibility in the bid evaluation process.

3. The RFP (including the response package, proposed forms of PPAs and other contracts) shall describe the bidding guidelines, the bidding requirements to guide bidders in preparing and submitting their proposals, the general bid evaluation and selection criteria, the risk factors important to the utility, and, to the extent practicable, the schedule for all steps in the bidding process.

4. The utility may charge bidders a reasonable fee, to be reviewed by the Independent Observer, for participating in the RFP process.

5. Other Content of RFP. The RFP shall also contain:

   a. Information on the relationship between an electric utility and its affiliate, and the circumstances under which an electric utility's affiliate may participate;

   b. An explanation of the procedures by which any person may present to the Commission positions that differ from those of the Independent Observer; and

   c. A statement that if disputes arise under this Framework, the dispute resolution process established in this Framework will control.

6. The process leading to the distribution of the RFP shall include the following steps (each step to be monitored and reported on by the Independent Observer), unless the Commission modifies this process for a particular competitive bid:

   a. The utility designs a draft RFP, then files its draft RFP and supporting documentation with the Commission;

b. The utility holds a technical conference to discuss the draft RFP with interested parties (which may include potential bidders);

c. Interested parties submit comments on the draft RFP to the utility and the Commission;

d. The utility determines whether and how to incorporate recommendations from interested parties in the draft RFP;

e. The utility submits its final, proposed RFP to the Commission for its review and approval (and modification if necessary) according to the following procedure:

(i) The Independent Observer shall submit its comments and recommendations to the Commission concerning the RFP and all attachments, simultaneously with the electric utility's proposed RFP.

(ii) The utility shall have the right to issue the RFP if the Commission does not direct the utility to do otherwise within thirty (30) days after the Commission receives the proposed RFP and the Independent Observer's comments and recommendations.

7. A pre-qualification requirement is a requirement that a bidder must satisfy to be eligible to bid. A pre-qualification process may be incorporated in the design of some bidding processes, depending on the specific circumstances of the utility and its resource needs. Any pre-qualification requirements shall apply equally to independent bidders, the electric utility's self-build bid, and the bid of any utility's affiliate.

8. As part of the design process, the utility shall develop and specify the type and form of threshold criteria that will apply to bidders, including the utility's self-build proposals. Examples of potential threshold criteria include requirements that bidders have site control, maintain a specified credit rating, and demonstrate that their proposed technologies are mature.

9. The design process shall address credit requirements and security provisions, which apply to: (a) the qualification of bidders; and (b) bid evaluation processes.

10. The utility shall have the discretion to modify the RFP or solicit additional bids from bidders after reviewing the initial bids, provided that such discretion is clearly identified in the RFP and any modification is reviewed by the Independent Observer and submitted to the Commission along with the Independent Observer's comments. The electric utility may

issue the modified RFP thirty (30) days after the Commission has received these materials, unless the Commission directs otherwise.

11. All involved parties shall plan, collaborate, and endeavor to complete the final RFP within ninety (90) days from the date the electric utility submits the draft RFP to the Commission.

C. FORMS OF CONTRACTS

1. The RFP shall include proposed forms of PPAs and other contracts, with commercially reasonable terms and conditions that properly allocate risks among the contracting parties in light of circumstances. The terms and conditions of the contracts shall be specified to the extent practical, so that bidders are aware of, among other things, performance requirements, pricing options, key provisions that affect risk allocation (including those identified in sub-paragraph 2 below), and provisions that may be subject to negotiation. Where contract provisions are not finalized or provided in advance of RFP issuance (e.g., because certain contract provisions must reflect features of the winning bidder's proposal such as technology or location), the RFP shall so indicate.

2. The provisions of a proposed contract shall address matters such as the following (unless inapplicable): (a) reasonable credit assurance and security requirements appropriate to an island system that reasonably compensates the utility and its customers if the project sponsor fails to perform; (b) contract buyout and project acquisition provisions; (c) in-service date delay and acceleration provisions; (d) liquidated damage provisions that reflect risks to the utility and its customers; and (e) contractual terms to allow for turnkey options.

3. The proposed contracts may allow the utility the option to request conversion of the plant to an alternate fuel if conditions warrant, with appropriate modifications to the contract to account for the bidder/seller's conversion costs and to assign the benefits of any lower fuel costs.

4. The RFP shall specify which terms in the proposed forms of contract are subject to negotiation or alternative proposals, or from which a bidder may request exceptions. For these terms, bidders may submit alternative language as part of their bids, provided that any such variation is not inconsistent with any IRP which described the resource at issue.

D. ISSUANCE OF THE RFP AND DEVELOPMENT OF PROPOSALS

1. Each electric utility shall take steps to provide notice of its RFPs to, and encourage participation from, the full community of prospective bidders.

2. Bidders may be required to submit a "notice of intent to bid" to the electric utility.

3. The electric utility shall develop and implement a formal process to respond to bidders' questions.

4. The electric utility may conduct a bidders' conference.

5. The electric utility shall provide bidders with access to information through a website where it can post documents and information.

6. The process shall require all third-party bids to be submitted by the deadline specified in the RFP, except that the utility's self-bid shall be submitted one day in advance.

7. Bids may be deemed non-conforming if they do not meet or otherwise provide all of the information requested in an RFP. At the utility's discretion, in consultation with the Independent Observer, proposals that are non-conforming may be given additional time to remedy their non-conformity. The utility, in consultation with the Independent Observer, may decline to consider any bid that is non-conforming.

E. BID EVALUATION / SELECTION CRITERIA

1. The utility, monitored by the Independent Observer, shall compare bids received in response to an RFP to one another and to the utility's self-build project (or the generic resource identified in the IRP, if no self-build project proposal is being advanced).

2. The evaluation criteria and the respective weight or consideration given to each such criterion in the bid evaluation process may vary from one RFP to another (depending, for example, on the RFP scope and specific needs of the utility).

3. The bid evaluation process shall include consideration of differences between bidders with respect to proposed contract provisions, and differences in anticipated compliance with such provisions, including but not limited to provisions intended to ensure:

   a. Generating unit and electric system reliability;

   b. Appropriate risk allocations;

   c. Counter-party creditworthiness; and

d. Bidder qualification.

4. Proposals shall be evaluated based on a consistent and reasonable set of economic and fuel price assumptions, to be specified in the RFP.

5. Both price and non-price evaluation criteria (e.g., externalities and societal impacts, and preferred attributes consistent with the Approved IRP), shall be described in the RFP, and shall be considered in evaluating proposals.

6. In evaluating competing proposals, all relevant incremental costs to the electric utility and its ratepayers shall be considered (e.g., these may include transmission costs and system impacts, and the reasonably foreseeable balance sheet and related financial impacts of competing proposals).

7. The amount of purchased power that a utility already has on its system, in terms of reliability and dispatchability, and the impacts that increasing the amount of purchased power may have, in terms of reliability and dispatchability, shall be taken into account in the bid evaluation. The RFP shall specify the methodology for considering this effect. Such methodology shall not cause double-counting with the financial effects discussed in sub-paragraph 6, above, and sub-paragraph 8, below.

8. The impact of purchased power costs on the utility's balance sheets, and the potential for resulting utility credit downgrades (and higher borrowing costs), may be accounted for in the bid evaluation. Where the utility has to restructure its balance sheet and increase the percentage of more costly equity financing in order to offset the impacts of purchasing power on its balance sheet, this rebalancing cost shall also be taken into account in evaluating the total cost of a proposal for a new generating unit if IPP-owned, and it may be a requirement that bidders provide all information necessary to complete these evaluations. The RFP shall describe the methodology for considering financial effects.

9. The type and form of non-price threshold criteria shall be identified in the RFP. Such threshold criteria may include, among other criteria, the following:

   a. Project development feasibility criteria (e.g., siting status, ability to finance, environmental permitting status, commercial operation date certainty, engineering design, fuel supply status, bidder experience, and reliability of the technology);

   b. Project operational viability criteria (e.g., operation and maintenance plan, financial strength, environmental compliance, and environmental impact);

c. Operating profile criteria (e.g., dispatching and scheduling, coordination of maintenance, operating profile such as ramp rates, and quick start capability); and

d. Flexibility criteria (e.g., in-service date flexibility, expansion capability, contract term, contract buy-out options, fuel flexibility, and stability of the price proposal).

10. The weights for each non-price criterion shall be fully specified by the utility in advance of the submission of bids, as they may be based on an iterative process that takes into account the relative importance of each criterion given system needs and circumstances in the context of a particular RFP. The Commission, however, may approve of less than full specification prior to issuance of the RFP. Since the subjectivity inherent in non-price criteria creates risk of bias and diminution in bidders' trust of the process, the RFP must specify likely areas of non-price evaluation, and the evaluation process must be closely monitored and publicly reported on by the Independent Observer.

F. EVALUATION OF THE BIDS

1. The evaluation and selection process shall be identified in the RFP, and may vary based on the scope of the RFP. In some RFP processes, a multi-stage evaluation process may be appropriate.

2. The electric utility shall document the evaluation and selection process for each RFP process, for review by the Commission in approving the outcome of the process (i.e., in approving a PPA or a utility self-build proposal).

3. A detailed system evaluation process, which uses models and methodologies that are consistent with those used in the utility's IRP processes, may be used to evaluate bids. In anticipation of such evaluation processes, the RFP shall specify the data required of bidders.

G. CONTRACT NEGOTIATIONS

1. There may be opportunities to negotiate price and non-price terms to enhance the value of the contract for the bidder, the utility, and its ratepayers. Examples of such provisions that may be open for negotiation include fuel supply arrangements and project operating characteristics. Negotiations shall be monitored by the Independent Observer.

2. Contract interaction with affiliates shall be permitted, provided that such interaction is closely monitored by an Independent Observer.

3. The electric utility may use competitive negotiations among short-listed bidders.

H. FAIRNESS PROVISIONS AND TRANSPARENCY

1. The competitive bidding process shall judge all bidders on the merits only.

2. During the bidding process, the electric utility shall treat all bidders, including any utility affiliate, the same in terms of access to information, time of receipt of information, and response to questions.

3. A "closed bidding process" is generally anticipated, rather than an "open bidding process." Under one type of closed bidding process, bidders are informed through the RFP of: (a) the process that will be used to evaluate and select proposals; (b) the general bid evaluation and selection criteria; and (c) the proposed forms of PPAs and other contracts (e.g., turnkey contract). However, bidders shall not have access to the utility's bid evaluation models, the detailed criteria used to evaluate bids, or information contained in proposals submitted by other bidders. (But see sub-paragraph 4(c), below, regarding a losing bidder's access to the model.)

4. If the electric utility chooses to use a closed process:

   a. The utility shall provide the Independent Observer, if an Independent Observer is required, with all the necessary information to allow the Independent Observer to understand the model and to enable the Independent Observer to observe the entire analysis in order to ensure a fair process; and

   b. After the utility has selected a bidder, the utility shall meet with the losing bidder or bidders to provide a general assessment of the losing bidder's specific proposal if requested by the losing bidder within seven (7) days of the selection.

5. The host electric utility shall be allowed to consider its own self-bid proposals in response to generation needs identified in its RFP.

6. Procedures shall be developed by the utility prior to the initiation of the bidding process to define the roles of the members of its various project teams, to outline communications processes with bidders, and to address confidentiality of the information provided by bidders. Such procedures shall be submitted in advance to the Independent Observer and the Commission for comment.

7. If the IRP indicates that a competitive bidding process will be used to acquire a generation resource or a block of generation resources, then the utility will indicate, in the submittal of its draft RFP to the Commission for review, which of the RFP process guidelines will be followed, the reasons why other guidelines will not be followed in whole or in part, and other process steps proposed based on good solicitation practice; provided that the Commission may require that other process steps be followed.

8. If proposed, utility self-build facilities or other utility-owned facilities (e.g., turnkey facilities), or facilities owned by an affiliate of the host utility, are to be compared against IPP proposals obtained through an RFP process. The Independent Observer shall monitor the utility's conduct of its RFP process, advise the utility if there are any fairness issues, and report to the Commission at various steps of the process, to the extent prescribed by the Commission. Specific tasks to be performed by the Independent Observer shall be identified by the utility in its proposed RFP. The Independent Observer will review and track the utility's execution of the RFP process to ascertain that no undue preference is given to an affiliate, the affiliate's bid, or to self-build or other utility-owned facilities. The Independent Observer's review shall include, to the extent the Commission or the Independent Observer deems necessary, each of the following steps, in addition to any steps the Commission or Independent Observer may add: (a) reviewing the draft RFP and the utility's evaluation of bids, monitoring communications (and communications protocols) with bidders; (b) monitoring adherence to codes of conduct, and monitoring contract negotiations with bidders; (c) assessing the utility's evaluation of affiliate bids, and self-build or other utility-owned facilities; and (d) assessing the utility's evaluation of an appropriate number of other bids. The utility shall provide the Independent Observer with all requested information. Such information may include, without limitation, the utility's evaluation of the unique risks and advantages associated with the utility self-build or other utility-owned facilities, including the regulatory treatment of construction cost variances (both underages and overages) and costs related to equipment performance, contract terms offered to or required of bidders that affect the allocation of risks, and other risks and advantages of utility self-build or other utility-owned projects to consumers. The Independent Observer may validate the criteria used to evaluate affiliate bids and self-build or other utility-owned facilities, and the evaluation of affiliate bids and self-build or other utility-owned facilities. In order to accomplish these tasks, the utility, in conjunction with the Independent Observer, shall propose methods for making fair comparisons (considering both cost and risks) between the utility-owned or self-build facilities and third-party facilities.

9. Where the electric utility is responding to its own RFP, or is accepting bids submitted by its affiliates, the utility will take additional steps to avoid self-dealing in both fact and perception.

   a. The following tasks shall be completed as a matter of course (i.e., regardless of whether the utility or its affiliate is seeking to advance a resource proposal), including: (i) the utility shall develop all bid evaluation criteria, bid selection guidelines, and the quantitative evaluation models and other information necessary for evaluation of bids prior to issuance of the RFP; (ii) the utility shall establish a website for disseminating information to all bidders at the same time; and (iii) the utility shall develop and follow a Procedures Manual, which describes: (1) the protocols for communicating with bidders, the self-build team, and others; (2) the evaluation process in detail and the methodologies for undertaking the evaluation process; (3) the documentation forms, including logs for any communications with bidders; and (4) other information consistent with the requirements of the solicitation process.

   b. The following tasks shall be completed whenever the utility or its affiliate is seeking to advance a resource proposal, including: (i) the utility shall submit its self-build option to the Commission one day in advance of receipt of other bids, and provide substantially the same information in its proposal as other bidders; (ii) the utility shall follow the Code of Conduct; and (iii) the utility shall implement appropriate confidentiality agreements prior to the issuance of the RFP to guide the roles and responsibilities of utility personnel.

   c. The Code of Conduct shall be signed by each utility employee involved either in advancing the self-build project or implementing the competitive bidding process, and shall require that:

      (i) Whenever staffing and resources permit, the electric utility shall establish internally a separate project team to undertake the evaluation, with no team member having any involvement with the utility self-build option;

      (ii) During the RFP design and bid evaluation process, there shall be no oral or written contacts between the employees preparing the bid and the electric utility's employees responsible for bid evaluation, other than contacts authorized by the Code of Conduct and the RFP;

(iii) Throughout the bidding process, the electric utility shall treat all bidders, including its self-build bid and any electric utility affiliate, the same in terms of access to information, time of receipt of information, and response to questions.

d. A company officer, identified to the Independent Observer and the Commission, shall have the written authority and obligation to enforce the Code of Conduct. Such officer shall certify, by affidavit, Code of Conduct compliance by all employees after each competitive process ends.

e. Further steps may be considered, as appropriate, or ordered by the Commission.

10. Where the utility seeks to advance its proposed facilities (i.e., over those of other developers who may submit bids in its RFP), its proposal must satisfy all the criteria applicable to non-utility bidders, including but not limited to providing all information required by the RFP, and being capable of implementation.

11. Bids submitted by affiliates shall be held to the same contractual and other standards as projects advanced by other bidders.

I. TRANSMISSION INTERCONNECTION AND UPGRADES

1. A winning bidder has the right to interconnect its generation to the electric utility's transmission system, and to have that transmission upgraded as necessary to accommodate the output of its generation.

2. With respect to procedures and methodologies for:

a. Designing interconnections;

b. Allocating the cost of interconnections;

c. Scheduling and carrying out the physical implementation of interconnections;

d. Identifying the need for transmission upgrades;

e. Allocating the cost of transmission upgrades; and

f. Scheduling and carrying out the physical implementation of transmission upgrades;

the electric utility shall treat all bidders, including its own bid and that of any affiliate, in a comparable manner.

3. Upon the request of a prospective bidder, the electric utility shall provide general information about the possible interconnection and transmission upgrade costs associated with project locations under consideration by the bidder.

4. In a compliance filing to be made within ninety days after issuance of this Framework, the electric utility shall submit a proposed tariff containing procedures for interconnection and transmission upgrades, to ensure comparable treatment among bidders including any electric utility or electric utility affiliate bid. This submission shall contain at least the following elements:

   a. A formal queuing process that ensures nondiscriminatory, auditable treatment of all requests for interconnection, upgrades and studies thereof;

   b. A means, if practical, of minimizing the cost of studies by bundling different requests into a single study;

   c. A methodology for allocating the costs of interconnection and transmission upgrades between the electric utility and the generator; and

   d. A process for obtaining information on current capacity, operations, maintenance and expansion plans relating to the transmission and distribution systems.

5. To ensure comparable treatment, the Independent Observer shall review and monitor the electric utility's policies, methods and implementation and report to the Commission.

V. DISPUTE RESOLUTION PROCESS

The Commission will serve as an arbiter of last resort, after the utility, Independent Observer, and bidders have attempted to resolve any dispute or pending issue. The Commission will use an informal expedited process to resolve the dispute within thirty (30) days, as described in Part III.B.8. There shall be no right to hearing or appeal from this informal expedited dispute resolution process. The Commission encourages affected parties to seek to work cooperatively to resolve any dispute or pending issue, perhaps with the assistance of an Independent Observer, who may offer to mediate but who has no decision-making authority. The utility and Independent Observer shall conduct informational meetings with the Commission and

Consumer Advocate to keep each apprised of issues that arise between or among the parties.

VI. PARTICIPATION BY THE HOST UTILITY

A. Where the electric utility is addressing a need for firm capacity in order to address system reliability issues or concerns:

1. In general, the utility shall develop a project proposal that is responsive to the resource need identified in the RFP. The proposal shall represent the utility's best ("self-build" or "utility-owned") response to that need in terms of foreseeable costs and other project characteristics.

2. If the utility opts not to advance its own project (i.e., over those of other developers), the utility shall request and obtain the Commission's approval. In making this request, the utility:

   a. Shall demonstrate why relying on the market to provide the needed resource is prudent, and such demonstration shall include evidence of the number of viable sellers the utility expects will compete;

   b. Shall develop a Contingency Plan to respond in a reasonable timeframe if the competitive bidding process unexpectedly fails to produce a viable project proposal; and

   c. If necessary, shall identify a Parallel Plan that is capable of being implemented, to the extent feasible, after an appropriate amount of planning, which may or may not be the supply-side resource or resources in the Approved IRP.

B. Where the RFP process has as its focus something other than a reliability-based need, the utility may choose (or decline) to advance its own project proposal either in the form of a self-build or utility-owned project.

C. If the RFP process results in the selection of non-utility (or third-party) projects to meet a system reliability need or statutory requirement, the utility shall develop and periodically update its Contingency Plan and, if necessary, its Parallel Plan to address the risk that the third-party projects may be delayed or not completed. When submitting the RFP to the Commission, the electric utility shall separately submit, to the extent practical, a description of such activities and a schedule for carrying them out. Such description shall be updated as appropriate.

1. The plans may include the identification of milestones for such projects, and possible steps to be taken if the milestones are not met.

2. Pursuant to the plans, it may be appropriate for the utility to proceed to develop a self-build or utility-owned project or projects until such action can no longer be justified as reasonable. The self-build or utility-owned project(s) may differ from the project(s) advanced by the utility in the RFP process, or the resource(s) identified in its Approved IRP Plan.

3. The contracts developed for the RFP process to acquire third-party resources shall include commercially reasonable provisions that address delays or non-completion of third-party projects, such as provisions that identify milestones for the projects, seller (i.e., bidder) obligations, and utility remedies if the milestones are not met, and may include provisions to provide the utility with the option to purchase the project under certain circumstances or events of default by the seller (i.e., the bidder).

D. A utility shall not advance mutually exclusive projects in response to an identified need.

VII. RATEMAKING

A. The costs that an electric utility reasonably and prudently incurs in designing and administering its competitive bidding processes are recoverable through rates to the extent reasonable and prudent.

B. The costs that an electric utility incurs in taking reasonable and prudent steps to implement Parallel Plans and Contingency Plans are recoverable through the utility's rates, to the extent reasonable and prudent, as part of the cost of providing reliable service to customers

C. The reasonable and prudent capital costs that are part of an electric utility's Parallel Plans and Contingency Plans shall be accounted for similar to costs for planning other capital projects (provided that such accounting treatment shall not be determinative of ratemaking treatment):

1. Such costs would be accumulated as construction work in progress, and carrying costs would accrue on such costs. If the Parallel Plans or Contingency Plans, as implemented, result in the addition of planned resources to the utility system, then the costs incurred and accrued carrying charges would be capitalized as part of the installed resources (i.e., recorded to plant-in-service) and added to rate base. The costs would be depreciated over the life of the resource addition.

2. If implementation of the Parallel Plans or Contingency Plans is terminated before the resources identified in such plans are placed into service, the costs incurred and accrued carrying charges included in construction work in progress would be transferred to a miscellaneous deferred debit account

and the balance would be amortized to expense over five years (or a reasonable period determined by the Commission), beginning when the base plan resource is placed into service. The amortization expense would be included in the utility's revenue requirement when there is a general rate case. Under appropriate circumstances, the Commission may allow additional carrying costs to accrue on the unamortized miscellaneous deferred balance.

D. The regulatory treatment of utility-owned or self-build facilities will be cost-based, consistent with traditional cost-of-service ratemaking, wherein prudently incurred capital costs are included in rate base; provided that the evaluation of the utility's bid must account for the possibility that the capital or running costs actually incurred, and recovered from ratepayers, over the plant's lifetime, will vary from the levels assumed in the utility's bid. Any utility-owned project selected pursuant to the RFP process will remain subject to prudence review in a subsequent rate proceeding with respect to the utility's obligation to prudently implement, construct or manage the project consistent with the objective of providing reliable service at the lowest reasonable cost.

VIII. QUALIFYING FACILITIES

A. For any resource to which the competitive bidding requirement does not apply (due to waiver or exemption), the utility retains its traditional obligation to offer to purchase capacity and energy from a QF at avoided cost upon reasonable terms and conditions approved by the Commission.

B. For any resource to which the competitive bidding requirement does apply, the utility shall apply to the commission to waive or modify the time periods described in Hawaii Administrative Rules § 6-74-15(c) (1998) for the utility to negotiate with a QF pursuant to the applicable provisions of Hawaii Administrative Rules § 6-74-15(c) (1998), and upon approval of the commission, the utility's obligation to negotiate with a QF shall be deferred pending completion of the competitive bidding process.

1. If a non-QF is the winning bidder:

a. A QF will have no PURPA right to supply the resource provided by a non-QF winning bidder.

b. If a non-QF winner does not supply all the capacity needed by the utility, or if a need develops between RFPs that will not be satisfied by an RFP due to a waiver or exemption, a QF, upon submitting a viable offer, is permitted to exercise its PURPA rights to sell at avoided cost. The commission's determination of avoided

cost will be bounded by the price level established by the winning non-QF.

2. Where the winning bidder is the utility's self-build option, a QF will not have a PURPA right to supply the resource provided by the utility's self-build option.

3. If a QF is the winning bidder, the QF has the right to sell to the electric utility at its bid price, unless the price is modified in the contract negotiations that are part of the bidding process.

EXHIBIT B

FRAMEWORK FOR COMPETITIVE BIDDING
[Proposed: June 30, 2006] December 8, 2006

STATE OF HAWAII
PUBLIC UTILITIES COMMISSION

Exhibit B

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STATE OF HAWAII
PUBLIC UTILITIES COMMISSION

FRAMEWORK FOR COMPETITIVE BIDDING
[Proposed: June 30, 2006] December 8, 2006

I. DEFINITIONS

As used in this Framework, unless the context clearly requires otherwise:

"Approved IRP" means an electric utility's IRP that has been approved by the Commission in the utility's IRP proceeding. As of the effective date of this Framework, the status of each utility's IRP is as follows: (1) on October 28, 2005, Hawaiian Electric Company, Inc. filed its 3rd IRP in In re Hawaiian Elec. Co., Inc., Docket No. 03-0253; (2) Maui Electric Company, Ltd. is scheduled to file its 3rd IRP by [October 31, 2006,] **April 30, 2007,** in In re Maui Elec. Co., Ltd., Docket No. 04-0077; (3) Hawaii Electric Light Company, Inc. is scheduled to file its 3rd IRP by December 29, 2006, in In re Hawaii Elec. Light Co., Inc., Docket No. 04-0046; and (4) on June 20, 2006, the Commission opened a proceeding for Kauai Island Utility Cooperative's 3rd IRP in In re Kauai Island Util. Coop., Docket No. 2006-0165.

"CIP Approval Requirements" means the procedure set forth in the Commission's General Order No. 7, Standards for Electricity Utility Service in the State of Hawaii, Paragraph 2.3(g), as modified by In re Kauai Island Util. Coop., Docket No. 03-0256, Decision and Order No. 21001, filed on May 27, 2004, and In re Hawaiian Elec. Co., Inc., Hawaii Elec. Light Co., Inc., and Maui Elec. Co., Ltd., Docket No. 03-0257, Decision and Order No. 21002, filed on May 27, 2004. "In general, [the] commission's analysis of capital expenditure applications involves a review of whether the project and its costs are reasonable and consistent with the public interest, among other factors. If the commission approves the [electric] utility's application, the commission in effect authorizes the utility to commit funds for the project, subject to the proviso that 'no part of the project may be included in the utility's rate base unless and until the project is in fact installed, and is used and useful for public utility purposes.'" Decision and Order No. 21001, at 12; and Decision and Order No. 21002, at 12.

"Code of Conduct" means a written code developed by the host electric utility and approved by the Commission to ensure the fairness and integrity of the competitive bidding process, in particular where the host utility or its affiliate seeks to advance its own resource proposal in response to an RFP. The "Code of Conduct" is more fully described in Part IV.H.9.c of the Framework.

"Commission" means the Public Utilities Commission of the State of Hawaii.

"Competitive bid" or "competitive bidding" means the mechanism established by this Framework for acquiring a future energy generation resource or a block of generation resources by an electric utility.

"Consumer Advocate" means the Division of Consumer Advocacy of the Department of Commerce and Consumer Affairs, State of Hawaii.

"Contingency Plan" means an electric utility's plan to provide either temporary or permanent generation or load reduction programs to address a near-term need for capacity as a result of an actual or expected failure of an RFP process to produce a viable project proposal, or of a project selected in an RFP. The utility's Contingency Plan may be different from the utility's Parallel Plan and the utility's bid. The term "utility's bid," as used herein, refers to a utility's proposal advanced in response to a need that is addressed by its RFP.

"Electric utility" or "utility" means a provider of electric utility service that is regulated by and subject to the Commission's jurisdiction pursuant to Chapter 269, [HRS, as amended.] **Hawaii Revised Statutes.**

["FERC" means the Federal Energy Regulatory Commission.]

"Framework" means the Framework for Competitive Bidding **dated December 8, 2006,** adopted by the Commission in Docket No. 03-0372.

["HAR" means the Hawaii Administrative Rules, as amended.]

["HRS" means the Hawaii Revised Statutes, as amended.]

"Independent Observer" means the neutral person or entity retained by the electric utility to monitor the utility's competitive bidding process, and to advise the utility and Commission on matters arising out of the competitive bidding process, as described in Part III.C of the Framework. [To the extent applicable, "Independent Observer" also means a neutral person or entity that is an expert in interconnection and transmission upgrades, pursuant to Part IV.I.5 of the Framework.]

"IPP" means an independent power producer that is not subject to the Commission's regulation or jurisdiction as a public utility.

"IRP" means an electric utility's Integrated Resource Plan that has been submitted to the Commission for review and approval in the utility's IRP proceeding, in accordance with the Commission's IRP Framework. The overall goal of integrated resource planning is the identification of the resources or the mix of resources for meeting near and long-term customer energy needs in an efficient and reliable manner at the lowest reasonable cost. Each electric utility is responsible for developing an IRP that meets the energy needs of its customers. The IRP Framework requires each electric utility to develop a long-range, twenty (20)-year plan and a medium-range five (5)-year action plan to be submitted on a

three (3)-year planning cycle for the Commission's review and approval. The IRP process is a vehicle for the Commission, the electric utilities, energy stakeholders, and the public to understand and influence the planning process involved in identifying and evaluating the mix of demand-side and supply-side energy resources needed to meet near and long-term energy needs in an efficient and reliable manner at the lowest reasonable cost.

"IRP Framework" means the Commission's Framework for Integrated Resource Planning, dated May 22, 1992, as amended by In re Public Util. Comm'n, Docket No. 05-0075, Decision and Order No. 22490, filed on May 26, 2006.

"Parallel Plan" means the generating unit plan (comprised of one or multiple generation resources) that is pursued by the electric utility in parallel with a third-party project selected in an RFP until there is reasonable assurance that the third-party project will reach commercial operation, or until such action can no longer be justified to be reasonable. The utility's Parallel Plan unit(s) may be different from that proposed in the utility's bid. The term "utility's bid," as used herein, refers to a utility's proposal advanced in response to a need that is addressed by its RFP.

"PPA" means a power purchase agreement or contract to purchase firm capacity, energy, or both, from an electric utility, pursuant to the terms of this Framework.

"PURPA" means the Federal Public Utility Regulatory Policies Act of 1978, as amended.

"QF" means a cogeneration facility or a small power production facility that is a qualifying facility under Subpart B of 18 Code of Federal Regulations §§ 292.201 – 292.211. See also 18 Code of Federal Regulations § 291.201(b)(1) (definition of "qualifying facility").

"RFP" means a written request for proposal issued by the electric utility to solicit bids from interested third-parties, and where applicable from the utility or its affiliate, to supply a future generation resource or a block of generation resources to the utility pursuant to the competitive bidding process.

II. CONTEXT FOR COMPETITIVE BIDDING

A. USE OF COMPETITIVE BIDDING

1. This Framework applies to electric utilities regulated by and subject to the Commission's jurisdiction pursuant to Chapter 269, [HRS.] **Hawaii Revised Statutes.**

2. A determination shall be made by the Commission in a utility's IRP proceeding as to whether a competitive bidding process shall be used to acquire a future generation resource or a block of generation resources.

3. Competitive bidding, unless the Commission finds it to be unsuitable, is established as the required mechanism for acquiring a future generation resource or a block of generation resources, whether or not such resource has been identified in a utility's IRP. The basis for such a finding shall be explained by the utility in its IRP, and the determination shall be made by the Commission in its review of the utility's IRP. See Part II.C, below. The following conditions and possible exceptions apply:

   a. Competitive bidding will benefit Hawaii when it: (i) facilitates an electric utility's acquisition of supply-side resources in a cost-effective and systematic manner; (ii) offers a means by which to acquire new generating resources that are overall lower in cost or better performing than the utility could otherwise achieve; (iii) does not negatively impact the reliability or unduly encumber the operation or maintenance of Hawaii's unique island electric systems; (iv) promotes electric utility system reliability by facilitating the timely acquisition of needed generation resources and allowing the utility to adjust to changes in circumstances; and (v) is consistent with IRP objectives.

   b. Under certain circumstances, to be considered by the Commission in the context of an electric utility's request for waiver under Part II.A.4, below, competitive bidding may not be appropriate. These circumstances include: (i) when competitive bidding will unduly hinder the ability to add needed generation in a timely fashion; (ii) when the utility and its customers will benefit more if the generation resource is owned by the utility rather than by a third-party (for example, when reliability will be jeopardized by the utilization of a third-party resource); (iii) when more cost-effective or better performing generation resources are more likely to be acquired more efficiently through different procurement processes; or (iv) when competitive bidding will impede or create a disincentive for the achievement of IRP goals, renewable energy portfolio standards or other government objectives and policies, or conflict with requirements of other controlling laws, rules, or regulations.

   c. Other circumstances that could qualify for a waiver include: (i) the expansion or repowering of existing utility generating units [(provided that a waiver means the electric utility need not conduct competitive bidding for the job of expansion or repowering; and provided further that the waiver will not relieve the electric utility of an obligation to seek competitive bids for alternative means of supplying the capacity to be made available by the repowering or expansion); (ii) the renegotiation of existing power purchase agreements; (iii)] **(ii)** the acquisition of near-term power supplies

for short-term needs; [(iv)] **(iii)** the acquisition of power from a non-fossil fuel facility (such as a waste-to-energy facility) that is being installed to meet a governmental objective; and [(v)] **(iv)** the acquisition of power supplies needed to respond to an emergency situation.

d. Furthermore, the Commission may waive this Framework or any part thereof upon a showing that the waiver will likely result in a lower cost supply of electricity to the utility's general body of ratepayers, increase the reliable supply of electricity to the utility's general body of ratepayers, or is otherwise in the public interest.

e. This Framework does not apply to: (i) the three utility projects currently being developed: Hawaiian Electric Company, Inc.'s Campbell Industrial Park CT-1, Hawaii Electric Light Company, Inc.'s Keahole ST-7, and Maui Electric Company, Ltd.'s Maalaea M-18; [and (ii) offers to sell energy on an as-available basis by non-fossil fuel generation producers that are under review by an electric utility at the time this Framework is adopted. The offers to sell energy that are exempt from this Framework under Sub-part II.A.3.e.(ii) are limited to those that are set forth in: the Kauai Island Utility Cooperative's Oral Argument Hearing Exhibit A, dated June 19, 2006; and the list from Hawaiian Electric Company, Inc., Hawaii Electric Light Company, Inc., and Maui Electric Company, Ltd., submitted to the Commission and Consumer Advocate under confidential protective order on June 27, 2006.] **(ii) offers to sell energy on an as-available basis by non-fossil fuel producers that were submitted to an electric utility before this Framework was adopted; and (iii) offers to sell firm energy and/or capacity by non-fossil fuel producers that were submitted to an electric utility before this Framework was adopted, or that resulted from negotiations with respect to offers to sell energy on an as-available basis by non-fossil fuel producers that were submitted to an electric utility before this Framework was adopted; provided that negotiations with respect to such firm energy and/or capacity offers are concluded no later than December 31, 2007.**

f. This Framework also does not apply to: (i) generating units with a net output available to the utility of 1% or less of a utility's total firm capacity, including that of independent power producers, or with a net output of 5 MW or less, whichever is lower (for systems that cover more than one island (i.e., Maui Electric Company, Ltd.'s system, which has generation on Maui, Molokai and Lanai), the system firm capacity will be determined on a consolidated basis); (ii) distributed generating units at substations and other sites

installed by the utility on a temporary basis to help address reserve margin shortfalls; (iii) customer-sited, utility-owned distributed generating units that have been approved by the Commission in accordance with the requirements of Decision and Order No. 22248, issued January 27, 2006, as clarified by Order No. 22375, issued April 6, 2006 in Docket No. 03-0371; and (iv) renewable energy or new technology generation projects under 1 MW installed for "proof-of-concept" or demonstration purposes.

g. This Framework also does not apply to qualified facilities and non-fossil fuel producers with respect to: (i) power purchase agreements for as-available energy; provided that an electric utility is not required to offer a term for such power purchase agreements that exceeds five years if it has a bidding program that includes as-available energy facilities; (ii) power purchase agreements for facilities with a net output available to the utility of 2 MW or less; (iii) power purchase agreement extensions for three years or less on substantially the same terms and conditions as the existing power purchase agreements and/or on more favorable terms and conditions; (iv) power purchase agreement modifications to acquire additional firm capacity or firm capacity from an existing facility, or from a facility that is modified without a major air permit modification; and (v) renegotiations of power purchase agreements in anticipation of their expiration, approved by the Commission.

[f.]**h.** When a competitive bidding process will be used to acquire a future generation resource or a block of generation resources, the generating units acquired under a competitive bidding process must meet the needs of the utility in terms of the reliability of the generating unit, the characteristics of the generating unit required by the utility, and the control the utility needs to exercise over operation and maintenance in order to reasonably address system integration and safety concerns.

4. The procedure for seeking a waiver is as follows:

a. Applications for waivers, and transition to competitive bidding requirements for new generation projects.

(i) For proposed generation projects included in, or consistent with, IRPs approved by the Commission prior to the effective date of this Framework, the electric utility shall file an application for waiver with the Commission, [and

obtain Commission approval of the waiver request prior to expending or committing any funds or resources relating to the proposed generation project.], **as soon as practicable, consistent with Part II.A.4.a(iv), below.**

(ii) For proposed generation projects included in, or consistent with, the IRP filed for Commission approval in In re Hawaiian Elec. Co., Inc., Docket 03-0253, the electric utility shall file any waiver request no later than sixty (60) days following a Commission order approving the IRP.

(iii) For all proposed generation projects included in, or consistent with, IRPs that have not yet been filed with the Commission for approval as of the effective date of this Framework, any waiver request shall accompany the filing of the proposed IRP for the Commission's approval.

(iv) An electric utility that seeks a waiver shall take all steps reasonably required to submit its application for waiver as soon as practicable such that, in the event the Commission denies the request, sufficient time remains to conduct competitive bidding without imprudently risking system reliability.

b. In no event shall a Commission decision granting a waiver be construed as determinative of whether an electric utility acted prudently in the matter.

5. Exemption - ownership structure of an electric utility. Upon a showing that an entity has an ownership structure in which there is no substantial difference in economic interests between its owners and its customers, such that the electric utility has no disincentive to pursue new generation projects through competitive bidding, the Commission will exempt such entity from this Framework.

B. SCOPE OF COMPETITIVE BIDDING

1. An electric utility's IRP shall specify the proposed scope of the RFP for any specific generation resource or block of generation resources that the IRP states will be subject to competitive bidding.

2. Competitive bidding shall enable the comparison of a wide range of supply-side options, including PPAs, utility self-build options, turnkey arrangements (i.e., build and transfer options), and tolling arrangements where practical.

3. Each electric utility shall take steps to provide notice of its RFPs, and to encourage participation from a full range of prospective bidders. PURPA qualifying facilities, IPPs, the host utility, and its affiliates, and other utilities shall be eligible to participate in any supply-side RFP.

4. Competitive bidding processes may vary by resource type, provided those processes are consistent with this Framework. For instance, solicitation processes for distributed generation facilities may be different from those for central station generating supplies. An electric utility may establish a separate procurement process (such as a "set aside" or separate RFP process) to acquire as-available or firm capacity from renewable generating facilities.

5. RFP processes shall be flexible, and shall not include unreasonable restrictions on sizes and types of projects considered, taking into account the appropriate sizes and types identified in the IRP process.

C. RELATIONSHIP TO INTEGRATED RESOURCE PLANNING

1. The Commission's IRP Framework applicable to each electric utility shall continue to be used to set the strategic direction of resource planning by the electric utilities. In order for competitive bidding to be effectively and efficiently integrated with a utility's IRP, stakeholders must work cooperatively to identify and adhere to appropriate timelines, which may need to be expedited.

2. This Framework is intended to complement the Commission's IRP Framework.

3. A determination shall be made by the Commission in an IRP proceeding as to whether a competitive bidding process shall be used to acquire a generation resource or a block of generation resources that is included in the IRP. Actual competitive bidding for IRP-designated resources will **normally** occur after the IRP is approved, through an RFP, which is consistent with the IRP approved by the Commission. **However, during the transition into competitive bidding processes for new generation under this Framework, if the IRP in effect was approved prior to the effective date of this Framework, a utility shall initiate competitive bidding (or request a waiver under Part II.A.4) as may be required by this Framework. As required by the IRP Framework, such projects must be identified in or consistent with the IRP in effect at the time.**

4. Integration of competitive bidding into IRP. The general approach to integration has four parts, in sequence:

a. The electric utility conducts an IRP process, culminating in an IRP that identifies a preferred resource plan (including capacity, energy, timing, technologies, and other preferred attributes). This IRP shall identify those resources for which the utility proposes to hold competitive bidding, and those resources for which the utility seeks a waiver from competitive bidding, and shall include an explanation of the facts supporting a waiver, based on the waiver criteria set forth in Part II.A.3, above.

b. The Commission approves, modifies, or rejects the IRP, including any requests for waiver, under the IRP Framework and this Framework.

c. The electric utility conducts a competitive bidding process, consistent with the IRP; such process shall include the advance filing of a draft RFP with the Commission, which shall be consistent with the IRP.

d. The electric utility selects a winner from the bidders. (But see Part II.C.6, below, concerning the process when there are no bidders worth choosing.).

5. An evaluation of bids in a competitive bidding process may reveal desirable projects that were not included in an [approved]**Approved** IRP. These projects may be selected if it can be demonstrated that the project is consistent with an [approved]**Approved** IRP and that such action is expected to benefit the utility and its ratepayers.

6. An evaluation of bids in a competitive bidding process may reveal that the acquisition of any of the resources in the bid will not assist the utility in fulfilling its obligations to its ratepayers. In such a case, the utility may determine not to acquire such resources and shall notify the Commission accordingly. Such notification shall include: (a) an explanation of why the competitive bidding process failed to produce a viable project; and (b) a description of what actions the electric utility intends to take to replace the resource sought through the unsuccessful competitive bidding process.

D. MITIGATION OF RISKS ASSOCIATED WITH COMPETITIVE BIDDING

1. To carry out its competitive bidding obligations consistently with its resource sufficiency obligations, the electric utility must conduct, or consider conducting, three types of activities: self-build, parallel planning, and contingency planning. The utility's self-build obligation is addressed in Parts VI.A.1 and VI.C, below. The electric utility's parallel planning

and contingency planning activities are discussed in Parts II.D.2 to II.D.4, below.

2. In consideration of the isolated nature of the island utility systems, the utility may use a Parallel Plan option to mitigate the risk that an IPP's option may fail. Under this Parallel Plan option, the utility may continue to proceed with its Parallel Plan until it is reasonably certain that the awarded IPP project will reach commercial operation, or until such action can no longer be justified to be reasonable. The electric utility shall use prudent electric utility practices to determine the nature, amount, and timing of the parallel planning activities, and take into account (without limitation) the cost of parallel planning and the probability of third-party failure. The electric utility's Parallel Plan unit(s) may differ from that proposed in the electric utility's bid. For each project that is subject to competitive bidding, the electric utility shall submit a report on the cost of parallel planning upon the Commission's request.

3. The electric utility may require bidders (subject to the Commission's approval with other elements of a proposed RFP) to offer the utility the option to purchase the project under certain conditions or in the event of default by the seller (i.e., the bidder), subject to commercially reasonable payment terms.

4. The utility's Contingency Plan need not be the resource identified as the preferred resource in its [approved]**Approved** IRP Plan.

III. ROLES IN COMPETITIVE BIDDING

A. ELECTRIC UTILITY

1. The role of the host electric utility in the competitive bidding process shall include:

   a. Designing the solicitation process, establishing evaluation criteria consistent with its overall IRP objectives, and specifying timelines;

   b. Designing the RFP documents and proposed forms of PPAs and other contracts;

   c. Implementing and managing the RFP process, including communications with bidders;

   d. Evaluating the bids received;

   e. Selecting the bids for negotiations based on established criteria;

f. Negotiating contracts with selected bidders;

g. Determining, where and when feasible, the interconnection facilities and transmission upgrades necessary to accommodate new generation;

h. Competing in the solicitation process with a self-build option, unless a waiver is granted; and

i. Providing the Independent Observer with all requested information.

2. In designing each competitive bidding process, each electric utility shall: (a) take [all] prudent steps to obtain information on the experiences of similarly-situated utilities and utilities that have conducted competitive bidding processes to address similar needs; and (b) take [all] prudent steps to take full advantage of available industry sources of related information. ["All prudent steps" includes identifying and using best practices.]

3. Access to Utility Sites. The utility shall consider, on a case-by-case basis before an RFP is issued, offering one or several utility-owned or controlled sites to bidders in each competitive bidding process. The utility shall consider such factors as:

a. The anticipated specific non-technical terms of potential proposals. An example of one factor that will need to be examined is whether benefits will be expected from a "turnkey" project that the utility will or may eventually own and operate.

b. The feasibility of the installation. Examples of the factors that may need to be examined in order to evaluate the feasibility of the installation may include, but are not be limited to the following:

i. Specific physical and technical parameters of anticipated non-utility installations, such as the technology that may be installed, space and land area requirements, topographic, slope and geotechnical constraints, fuel logistics, water requirements, number of site personnel, access requirements, waste and emissions from operations, noise profile, electrical interconnection requirements, and physical profile; and

ii. How the operation, maintenance, and construction of each installation will affect factors such as security at the site, land ownership issues, land use and permit considerations (e.g., compatibility of the proposed development with

present and planned land uses), existing and new environmental permits and licenses, impact on operations and maintenance of existing and future facilities, impact to the surrounding community, change in zoning permit conditions, and safety of utility personnel.

c. The utility's anticipated future use of the site. Examples of why it may be beneficial for the utility to maintain site control may include, but are not limited to the following: (i) to ensure that power generation resources can be constructed to meet system reliability requirements; (ii) to retain flexibility for the utility to perform crucial parallel planning for a utility owned option to back-up the unfulfilled commitments, if any, of third-party developers of generation; and (iii) to retain the flexibility for the utility to acquire the unique efficiency gains of combined-cycle conversions and repowering projects of existing utility simple-cycle combustion turbines and steam fired generating facilities, respectively.

d. The effect on competitive forces of denying bidders the ability to use the site, taking into account whether the unavailability of adequate sites for non-utility bidders gives the electric utility a competitive advantage.

e. Where the utility has chosen not to offer a site to a third-party, the electric utility shall present its reasons, specific to the project and sites at issue, in writing to the Independent Observer and the Commission.

4. The utility shall submit to the Commission for review and approval (subject to modification if necessary), a Code of Conduct described in Part IV.H.9.c, below, prior to the commencement of any competitive bid process under this Framework.

B. HAWAII PUBLIC UTILITIES COMMISSION

1. The primary role of the Commission is to ensure that: (a) each competitive bidding process conducted pursuant to this Framework is fair in its design and implementation so that selection is based on the merits; (b) projects selected through competitive bidding processes are consistent with the utility's [approved]**Approved** IRP; (c) the electric utility's actions represent [best] **prudent** practices; and (d) throughout the process, the utility's interests are aligned with the public interest even where the utility has dual roles as designer and participant.

2. The Commission will review, and at its option, approve or modify, each proposed RFP before it is issued, including any proposed form of contracts and other documentation that will accompany the RFP.

3. The Commission shall be the final arbiter of disputes that arise among parties in relation to a utility's competitive bidding process, to the extent described in Part V, below.

4. The Commission shall review, and approve or reject, the contracts that result from competitive bidding processes conducted pursuant to this Framework, in a separate docket upon application by the utility in which the expedited process in Part III.B.8 shall not apply. In reviewing such contracts, the Commission may establish review processes that are appropriate to the specific circumstances of each solicitation, including the time constraints that apply to each commercial transaction.

5. If the utility identifies its self-build or turnkey project as superior to bid proposals, the utility shall seek Commission approval in keeping with established CIP Approval Requirements.

6. The Commission shall review and approve (and modify if necessary), the electric utility's tariffs for interconnection and transmission upgrades required by Part IV.I of this Framework.

7. The Commission shall review any complaint that the electric utility is not complying with the Framework, pursuant to Part V.

8. Timely Commission review, approval, consent, or other action described in this Framework is essential to the efficient and effective execution of this competitive bidding process. Accordingly, to expedite Commission action in this competitive bidding process, whenever Commission review, approval, consent, or action is required under this Framework, the Commission may do so in an informal expedited process. The Commission hereby authorizes its Chairman, or his designee (which designee, may be another Commissioner, a member of the Commission staff, Commission hearings officer, or a Commission hired consultant), in consultation with other Commissioners, Commission staff, and the Independent Observer, to take any such action on behalf of the Commission.

C. INDEPENDENT OBSERVER

1. An Independent Observer is required whenever the utility or its affiliate seeks to advance a project proposal (i.e., in competition with those offered by bidders) in response to a need that is addressed by its RFP, or when the Commission otherwise determines. An Independent Observer will

monitor the competitive bidding process and will report on the progress and results to the Commission, sufficiently early so that the Commission is able to address any defects and allow competitive bidding to occur in time to meet capacity needs. Any interaction between a utility and its affiliate during the course of a solicitation process, beginning with the preparation of the RFP, shall be closely monitored by the Independent Observer. Specific tasks to be performed by the Independent Observer shall be identified by the utility in its proposed RFP and as may be required by the Commission.

2. Independent Observer obligations. The Independent Observer will have duties and obligations in two areas: Advisory and Monitoring.

a. Advisory. The Independent Observer shall:

(i) Certify to the Commission that at each of the following steps, the electric utility's judgments created no unearned advantage for the electric utility or any affiliate:
(1) Pre-qualification criteria;
(2) RFP;
(3) Model PPA to be attached to the RFP;
[(4) Code of Conduct;]
[(5)]**(4)**Selection criteria;
[(6)]**(5)**Evaluation of bids; and
[(7)]**(6)**Final decision to purchase power or proceed with self-build option.

(ii) Advise the electric utility on its decision-making during, and with respect to, each of the electric utility's actions listed in the preceding item;

(iii) Report immediately to the electric utility's executive in charge of ensuring compliance with this Framework, and the Commission, any deviations from the Framework or violations of any procurement rules;

(iv) After the electric utility's procurement selection is completed, provide the Commission with:

(1) An overall assessment of whether the goals of the RFP were achieved, such goals to include without limitation the attraction of a sufficient number of bidders and the elimination of actual or perceived utility favoritism for its own or an affiliate's project; and

(2) Recommendations for improving future competitive bidding processes.

(v) Be available to the Commission as a witness if required to evaluate a complaint filed against an electric utility for non-compliance with this Framework, or if required in a future rate case if questions of prudence arise.

b. Monitoring. The Independent Observer shall:

(i) Monitor all steps in a competitive bidding process, beginning with the preparation of the RFP, or at such earlier time as determined by the Commission;

(ii) Monitor communications (and communications protocols) with bidders;

(iii) Monitor adherence to [codes of conduct;]**Codes of Conduct;**

(iv) Monitor contract negotiations with bidders;

(v) Monitor all interactions between the electric utility and its affiliate, during all events affecting a solicitation process, if the affiliate may be a bidder; and

(vi) Report to the Commission on monitoring results during each stage of the competitive process, sufficiently early so that the Commission can correct defects or eliminate uncertainties without endangering project milestones.

3. The Independent Observer shall have no decision-making authority, and no obligation to resolve disputes, but may offer to mediate between disputing parties.

4. The Independent Observer shall provide comments and recommendations to the Commission, at the Commission's request, to assist in resolving disputes or in making any required determinations under this Framework.

5. Independent Observer qualifications. The Independent Observer shall be qualified for the tasks the observer must perform. Specifically, the Independent Observer shall:

a. Be knowledgeable about, or be able rapidly to absorb knowledge about, any unique characteristics and needs of the electric utility;

b. Be knowledgeable about the characteristics and needs of small, non-interconnected island electric grids, and be aware of the unique challenges and operational requirements of such systems;

c. Have the necessary experience and familiarity with utility modeling capability, transmission system planning, operational characteristics, and other factors that affect project selection;

d. Have a working knowledge of common PPA terms and conditions, and the PPA negotiations process;

e. Be able to work effectively with the electric utility, the Commission, and its staff during the bid process; and

f. Be able to demonstrate impartiality.

6. Selection and contracting. The electric utility shall: (a) identify qualified candidates for the role of Independent Observer (and also shall consider qualified candidates identified by the Commission and prospective participants in the competitive bidding process); (b) seek and obtain Commission approval of its final list of qualified candidates; and (c) select an Independent Observer from among the Commission-approved qualified candidates. The electric utility's contract with the Independent Observer shall be acceptable to the Commission, and provide, among other matters, that the Independent Observer: (a) report to the Commission and carry out such tasks as directed by the Commission, including the tasks described in this Framework; (b) cannot be terminated and payment cannot be withheld without the consent of the Commission; and (c) can be terminated by the Commission without the utility's consent, if the Commission deems it to be in the public interest in the furtherance of the objectives of this Framework to do so. The utility may recover prudently incurred Independent Observer costs from its customers upon approval of the Commission in a rate case or other appropriate proceeding[.]**, and may defer the costs prudently incurred for the Independent Observer (i.e., deferred accounting).**

7. As part of the RFP design process, the utility shall develop procedures to be included in the RFP by which any participant in the competitive bidding process may present to the Commission, for review and resolution, positions that differ from those of the Independent Observer (i.e., in the event the Independent Observer makes any representations to the Commission upon which the participant does not agree).

IV. THE REQUEST FOR PROPOSALS PROCESS

A. GENERAL

1. Competitive bidding shall be structured and implemented in a way that facilitates an electric utility's acquisition of supply-side resources identified in a utility's IRP in a cost-effective and systematic manner, consistent with state energy policy. All costs and benefits incurred or received by the utility and its customers shall be taken into account in the bid evaluation and selection process.

2. Competitive bidding shall be structured and implemented in a flexible and efficient manner that promotes electric utility system reliability by facilitating the timely acquisition of needed resources and allowing the utility to adjust to changes in circumstances.

    a. The implementation of competitive bidding cannot be allowed to negatively impact reliability of the electric utility system.

    b. The generating units acquired under a competitive bidding process must meet the needs of the utility in terms of the reliability of the generating unit, the characteristics of the generating unit required by the utility, and the control the utility needs to exercise over operation and maintenance in order to minimize system integration concerns.

3. The competitive bidding process shall ensure that proposals and bidders are judged on the merits, without being unduly burdensome to the electric utilities and the Commission.

    a. The competitive bidding process shall include an RFP and supporting documentation by which the utility sets forth the requirements to be fulfilled by bidders and describes the process by which it will: (i) conduct its solicitation; (ii) obtain consistent and accurate information on which to evaluate bids; (iii) implement a consistent and equitable evaluation process; and (iv) systematically document its determinations. The RFP shall also describe the role of the Independent Observer and bidders' opportunities for challenges and for dispute resolution.

    b. When a utility advances its own project proposal (i.e., in competition with those offered by bidders) or accepts a bid from an affiliate, the utility shall take all reasonable steps, including any steps required by the Commission, to mitigate concerns over an unfair or unearned competitive advantage that may exist or reasonably be perceived by other bidders or stakeholders.

4. If an IPP, turnkey, or affiliate proposal is selected as a result of the RFP process, one or more contracts are the expected result. Proposed forms of PPAs and other contracts that may result from the RFP process (e.g., PPA for firm capacity, PPA for as-available energy, turnkey contract, etc.) shall be included with each RFP. The RFP shall specify whether any opportunity exists to propose or negotiate changes to the proposed form of PPA.

B. DESIGN OF THE COMPETITIVE BIDDING SOLICITATION PROCESS

1. The competitive bidding solicitation process shall include the following:

   a. Design of the RFP and supporting documents;

   b. Issuance of the RFP;

   c. Development and submission of proposals by bidders;

   d. A "multi-stage evaluation process" to reduce bids down to a short list or "award group" (i.e., a process that includes, without limitation: (i) receipt of the proposals; (ii) completeness check; (iii) threshold or minimum requirements evaluation; (iv) initial evaluation including price screen/non-price assessment; (v) selection of a short list; (vi) detailed evaluation or portfolio development; and (vii) selection of award group for contract negotiation);

   e. Contract negotiations (when a third-party bid is selected); and

   f. Commission approval of any resulting contract.

2. The RFP shall identify any unique system requirements and provide information regarding the requirements of the utility, important resource attributes, and criteria used for the evaluation. For example, if the utility values dispatchability or operating flexibility, the RFP shall: (a) request that a bidder offer such an option; and (b) explain how the utility will evaluate the impacts of dispatchability or operational flexibility in the bid evaluation process.

3. The RFP (including the response package, proposed forms of PPAs and other contracts) shall describe the bidding guidelines, the bidding requirements to guide bidders in preparing and submitting their proposals, the general bid evaluation and selection criteria, the risk factors important to the utility, and, to the extent practicable, the schedule for all steps in the bidding process.

4. The utility may charge bidders a reasonable fee, to be reviewed by the Independent Observer, for participating in the RFP process.

5. Other Content of RFP. The RFP shall also contain:

   a. Information on the relationship between an electric utility and its affiliate, and the circumstances under which an electric utility's affiliate may participate;

   b. An explanation of the procedures by which any person may present to the Commission positions that differ from those of the Independent Observer; and

   c. A statement that if disputes arise under this Framework, the dispute resolution process established in this Framework will control.

6. The process leading to the distribution of the RFP shall include the following steps (each step to be monitored and reported on by the Independent Observer), unless the Commission modifies this process for a particular competitive bid:

   a. The utility designs a draft RFP, then files its draft RFP and supporting documentation with the Commission;

   b. The utility holds a technical conference to discuss the draft RFP with interested parties (which may include potential bidders);

   c. Interested parties submit comments on the draft RFP to the utility and the Commission;

   d. The utility determines whether and how to incorporate recommendations from interested parties in the draft RFP;

   e. The utility submits its final, proposed RFP to the Commission for its review and approval (and modification if necessary) according to the following procedure:

      (i) The Independent Observer shall submit its comments and recommendations to the Commission concerning the RFP and all attachments, simultaneously with the electric utility's proposed RFP.

      (ii) The utility shall have the right to issue the RFP if the Commission does not direct the utility to do otherwise within thirty (30) days after the Commission receives the

proposed RFP and the Independent Observer's comments and recommendations.

7. A pre-qualification requirement is a requirement that a bidder must satisfy to be eligible to bid. A pre-qualification process may be incorporated in the design of some bidding processes, depending on the specific circumstances of the utility and its resource needs. Any pre-qualification requirements shall apply equally to independent bidders, the electric utility's self-build bid, and the bid of any utility's affiliate.

8. As part of the design process, the utility shall develop and specify the type and form of threshold criteria that will apply to bidders, including the utility's self-build proposals. Examples of potential threshold criteria include requirements that bidders have site control, maintain a specified credit rating, and demonstrate that their proposed technologies are mature.

9. The design process shall address credit requirements and security provisions, which apply to: (a) the qualification of bidders; and (b) bid evaluation processes.

10. The utility shall have the discretion to modify the RFP or solicit additional bids from bidders after reviewing the initial bids, provided that such discretion is clearly identified in the RFP and any modification is reviewed by the Independent Observer and submitted to the Commission along with the Independent Observer's comments. The electric utility may issue the modified RFP thirty (30) days after the Commission has received these materials, unless the Commission directs otherwise.

11. All involved parties shall plan, collaborate, and endeavor to complete the final RFP within ninety (90) days from the date the electric utility submits the draft RFP to the Commission.

C. FORMS OF CONTRACTS

1. The RFP shall include proposed forms of PPAs and other contracts, with commercially reasonable terms and conditions that properly allocate risks among the contracting parties in light of circumstances. The terms and conditions of the contracts shall be specified to the extent practical, so that bidders are aware of, among other things, performance requirements, pricing options, key provisions that affect risk allocation (including those identified in sub-paragraph 2 below), and provisions that may be subject to negotiation. Where contract provisions are not finalized or provided in advance of RFP issuance (e.g., because certain contract provisions must reflect features of the winning bidder's proposal such as technology or location), the RFP shall so indicate.

2. The provisions of a proposed contract shall address matters such as the following (unless inapplicable): (a) reasonable credit assurance and security requirements appropriate to an island system that reasonably compensates the utility and its customers if the project sponsor fails to perform; (b) contract buyout and project acquisition provisions; (c) in-service date delay and acceleration provisions; (d) liquidated damage provisions that reflect risks to the utility and its customers; and (e) contractual terms to allow for turnkey options.

3. The proposed contracts may allow the utility the option to request conversion of the plant to an alternate fuel if conditions warrant, with appropriate modifications to the contract to account for the bidder/seller's conversion costs and to assign the benefits of any lower fuel costs.

4. The RFP shall specify which terms in the proposed forms of contract are subject to negotiation or alternative proposals, or from which a bidder may request exceptions. For these terms, bidders may submit alternative language as part of their bids, provided that any such variation is not inconsistent with any IRP which described the resource at issue.

D. ISSUANCE OF THE RFP AND DEVELOPMENT OF PROPOSALS

1. Each electric utility shall take steps to provide notice of its RFPs to, and encourage participation from, the full community of prospective bidders.

2. Bidders may be required to submit a "notice of intent to bid" to the electric utility.

3. The electric utility shall develop and implement a formal process to respond to bidders' questions.

4. The electric utility may conduct a bidders' conference.

5. The electric utility shall provide bidders with access to information through a website where it can post documents and information.

6. The process shall require all third-party bids to be submitted by the deadline specified in the RFP, except that the utility's self-bid shall be submitted one day in advance.

7. Bids may be deemed non-conforming if they do not meet or otherwise provide all of the information requested in an RFP. At the utility's discretion, in consultation with the Independent Observer, proposals that are non-conforming may be given additional time to remedy their non-conformity. The utility, in consultation with the

Independent Observer, may decline to consider any bid that is non-conforming.

E. BID EVALUATION / SELECTION CRITERIA

1. The utility, monitored by the Independent Observer, shall compare bids received in response to an RFP to one another and to the utility's self-build project (or the generic resource identified in the IRP, if no self-build project proposal is being advanced).

2. The evaluation criteria and the respective weight or consideration given to each such criterion in the bid evaluation process [shall be specified in the RFP, but] may vary from one RFP to another (depending, for example, on the RFP scope and specific needs of the utility).

3. The bid evaluation process shall include consideration of differences between bidders with respect to proposed contract provisions, and differences in anticipated compliance with such provisions, including but not limited to provisions intended to ensure:

   a. Generating unit and electric system reliability;

   b. Appropriate risk allocations;

   c. Counter-party creditworthiness; and

   d. Bidder qualification.

4. Proposals shall be evaluated based on a consistent and reasonable set of economic and fuel price assumptions, to be specified in the RFP.

5. Both price and non-price evaluation criteria (e.g., externalities and societal impacts, and preferred attributes consistent with the [approved]**Approved** IRP), shall be described in the RFP, and shall be considered in evaluating proposals.

6. In evaluating competing proposals, all relevant incremental costs to the electric utility and its ratepayers shall be considered (e.g., these may include transmission costs and system impacts, and the reasonably foreseeable balance sheet and related financial impacts of competing proposals).

7. The amount of purchased power that a utility already has on its system, in terms of reliability and dispatchability, and the impacts that increasing the amount of purchased power may have, in terms of reliability and dispatchability, shall be taken into account in the bid evaluation.

The RFP shall specify the methodology for considering this effect. Such methodology shall not cause double-counting with the financial effects discussed in sub-paragraph 6, above, and sub-paragraph 8, below.

8. The impact of purchased power costs on the utility's balance sheets, and the potential for resulting utility credit downgrades (and higher borrowing costs), may be accounted for in the bid evaluation. Where the utility has to restructure its balance sheet and increase the percentage of more costly equity financing in order to offset the impacts of purchasing power on its balance sheet, this rebalancing cost shall also be taken into account in evaluating the total cost of a proposal for a new generating unit if IPP-owned, and it may be a requirement that bidders provide all information necessary to complete these evaluations. The RFP shall describe the methodology for considering financial effects.

9. The type and form of non-price threshold criteria shall be identified in the RFP. Such threshold criteria may include, among other criteria, the following:

   a. Project development feasibility criteria (e.g., siting status, ability to finance, environmental permitting status, commercial operation date certainty, engineering design, fuel supply status, bidder experience, and reliability of the technology);

   b. Project operational viability criteria (e.g., operation and maintenance plan, financial strength, environmental compliance, and environmental impact);

   c. Operating profile criteria (e.g., dispatching and scheduling, coordination of maintenance, operating profile such as ramp rates, and quick start capability); and

   d. Flexibility criteria (e.g., in-service date flexibility, expansion capability, contract term, contract buy-out options, fuel flexibility, and stability of the price proposal).

10. The weights for each non-price criterion shall be fully specified by the utility in advance of the submission of bids, as they may be based on an iterative process that takes into account the relative importance of each criterion given system needs and circumstances in the context of a particular RFP. The Commission, however, may approve of less than full specification prior to issuance of the RFP. Since the subjectivity inherent in non-price criteria creates risk of bias and diminution in bidders' trust of the process, the RFP must specify likely areas of non-price evaluation, and the evaluation process must be closely monitored and publicly reported on by the Independent Observer.

F. EVALUATION OF THE BIDS

1. The evaluation and selection process shall be identified in the RFP, and may vary based on the scope of the RFP. In some RFP processes, a multi-stage evaluation process may be appropriate.

2. The electric utility shall document the evaluation and selection process for each RFP process, for review by the Commission in approving the outcome of the process (i.e., in approving a PPA or a utility self-build proposal).

3. A detailed system evaluation process, which uses models and methodologies that are consistent with those used in the utility's IRP processes, may be used to evaluate bids. In anticipation of such evaluation processes, the RFP shall specify the data required of bidders.

G. CONTRACT NEGOTIATIONS

1. There may be opportunities to negotiate price and non-price terms to enhance the value of the contract for the bidder, the utility, and its ratepayers. Examples of such provisions that may be open for negotiation include fuel supply arrangements and project operating characteristics. Negotiations shall be monitored by the Independent Observer.

2. Contract interaction with affiliates shall be permitted, provided that such interaction is closely monitored by an Independent Observer.

3. The electric utility may use competitive negotiations among short-listed bidders.

H. FAIRNESS PROVISIONS AND TRANSPARENCY

1. The competitive bidding process shall judge all bidders on the merits only.

2. During the bidding process, the electric utility shall treat all bidders, including any utility affiliate, the same in terms of access to information, time of receipt of information, and response to questions.

3. A "closed bidding process" is generally anticipated, rather than an "open bidding process." Under one type of closed bidding process, bidders are informed through the RFP of: (a) the process that will be used to evaluate and select proposals; (b) the general bid evaluation and selection criteria; and (c) the proposed forms of PPAs and other contracts (e.g., turnkey contract). However, bidders shall not have access to the utility's bid evaluation models, the detailed criteria used to evaluate bids, or information contained in proposals submitted by other bidders.

(But see sub-paragraph 4(c), below, regarding a losing bidder's access to the model.)

4. If the electric utility chooses to use a closed process:

   a. [The electric utility shall explain why the benefits of closure exceed the cost in terms of diminution in the bidders' trust in the process;

   b. The Independent Observer must] **The utility shall provide the Independent Observer, if an Independent Observer is required, with all the necessary information to allow the Independent Observer to** understand the model and **to enable the Independent Observer to** observe the entire analysis **in order to ensure a fair process**; and

   [c.]**(b)** After the utility has selected a bidder, [any losing bidder must receive sufficient and timely access to the model (but not the bidding information) to be able to replicate the analysis as it applied to its bid.]**, the utility shall meet with the losing bidder or bidders to provide a general assessment of the losing bidder's specific proposal if requested by the losing bidder within seven (7) days of the selection.**

5. The host electric utility shall be allowed to consider its own self-bid proposals in response to generation needs identified in its RFP. [An electric utility may consider a bid from its affiliate if the Commission determines, prior to commencement of the competitive bidding process, that the affiliate has no advantage due to its past or present relationship to the electric utility. Such an advantage includes, but is not limited to, having employees who, due to their former employment with the electric utility, have knowledge about the electric utility's needs not readily available to the employees of non-electric utility bidders. The restriction on electric utility purchases from an affiliate set forth in this paragraph does not apply when the affiliate is a qualifying facility exercising its mandatory sales rights under PURPA.]

6. Procedures shall be developed by the utility prior to the initiation of the bidding process to define the roles of the members of its various project teams, to outline communications processes with bidders, and to address confidentiality of the information provided by bidders. Such procedures shall be submitted in advance to the Independent Observer and the Commission for comment.

7. If the IRP indicates that a competitive bidding process will be used to acquire a generation resource or a block of generation resources, then the

utility will indicate, in the submittal of its draft RFP to the Commission for review, which of the RFP process guidelines will be followed, the reasons why other guidelines will not be followed in whole or in part, and other process steps proposed based on good solicitation practice; provided that the Commission may require that other process steps be followed.

8. If proposed, utility self-build facilities or other utility-owned facilities (e.g., turnkey facilities), or facilities owned by an affiliate of the host utility, are to be compared against IPP proposals obtained through an RFP process. The Independent Observer shall monitor the utility's conduct of its RFP process, advise the utility if there are any fairness issues, and report to the Commission at various steps of the process, to the extent prescribed by the Commission. Specific tasks to be performed by the Independent Observer shall be identified by the utility in its proposed RFP. The Independent Observer will review and track the utility's execution of the RFP process to ascertain that no undue preference is given to an affiliate, the affiliate's bid, or to self-build or other utility-owned facilities. The Independent Observer's review shall include, to the extent the Commission or the Independent Observer deems necessary, each of the following steps, in addition to any steps the Commission or Independent Observer may add: (a) reviewing the draft RFP and the utility's evaluation of bids, monitoring communications (and communications protocols) with bidders; (b) monitoring adherence to codes of conduct, and monitoring contract negotiations with bidders; (c) assessing the utility's evaluation of affiliate bids, and self-build or other utility-owned facilities; and (d) assessing the utility's evaluation of an appropriate number of other bids. The utility shall provide the Independent Observer with all requested information. Such information may include, without limitation, the utility's evaluation of the unique risks and advantages associated with the utility self-build or other utility-owned facilities, including the regulatory treatment of construction cost variances (both underages and overages) and costs related to equipment performance, contract terms offered to or required of bidders that affect the allocation of risks, and other risks and advantages of utility self-build or other utility-owned projects to consumers. The Independent Observer may validate the criteria used to evaluate affiliate bids and self-build or other utility-owned facilities, and the evaluation of affiliate bids and self-build or other utility-owned facilities. In order to accomplish these tasks, [all participants in the bidding process shall have the opportunity to submit to the utility proposed methods for making fair comparisons (considering both costs and risks) between the utility-owned or self-build facilities and third-party facilities. Such a comparison between self-build or other utility-owned facilities and IPP facilities may include modeling likely variation in construction costs, plant efficiency, plant outages, or operation and maintenance costs and assigning a risk premium to the self-build or other utility-owned facilities, and the likely impact of IPP

proposals on the utility's capital structure, as well as the potential, in the case of a utility self-build bid, for cost overruns and fuel costs exceeding predictions. Such a comparison must make clear assumptions about the effect on the utility of the utility's own project.] **the utility, in conjunction with the Independent Observer, shall propose methods for making fair comparisons (considering both cost and risks) between the utility-owned or self-build facilities and third-party facilities.**

9. Where the electric utility is responding to its own RFP, or is accepting bids submitted by its affiliates, the utility will take additional steps to avoid self-dealing in both fact and perception.

   a. The following tasks shall be completed as a matter of course (i.e., regardless of whether the utility or its affiliate is seeking to advance a resource proposal), including: (i) the utility shall develop all bid evaluation criteria, bid selection guidelines, and the quantitative evaluation models and other information necessary for evaluation of bids prior to issuance of the RFP; (ii) the utility shall establish a website for disseminating information to all bidders at the same time; and (iii) the utility shall develop and follow a Procedures Manual, which describes: (1) the protocols for communicating with bidders, the self-build team, and others; (2) the evaluation process in detail and the methodologies for undertaking the evaluation process; (3) the documentation forms, including logs for any communications with bidders; and (4) other information consistent with the requirements of the solicitation process.

   b. The following tasks shall be completed whenever the utility or its affiliate is seeking to advance a resource proposal, including: (i) the utility shall submit its self-build option to the Commission one day in advance of receipt of other bids, and provide substantially the same information in its proposal as other bidders; (ii) the utility shall follow the Code of Conduct; and (iii) the utility shall implement appropriate confidentiality agreements prior to the issuance of the RFP to guide the roles and responsibilities of utility personnel.

   c. The Code of Conduct shall be signed by each utility employee involved either in advancing the self-build project or implementing the competitive bidding process, and shall require that:

      (i) [The] **Whenever staffing and resources permit, the** electric utility shall establish internally a separate project team to undertake the evaluation[;]**, with no team member**

having any involvement with the utility self-build option;

[(ii) No evaluation team member shall have any involvement with the electric utility self-build option or any career path that could be affected by such team member's evaluation;

(iii)] **(ii)** During the RFP design and bid evaluation process, there shall be no oral or written contacts between the employees preparing the bid and the electric utility's employees responsible for bid evaluation, other than contacts authorized by the Code of Conduct and the RFP;

[(iv)] **(iii)** Throughout the bidding process, the electric utility shall treat all bidders, including its self-build bid and any electric utility affiliate, the same in terms of access to information, time of receipt of information, and response to questions.

d. A company officer, identified to the Independent Observer and the Commission, shall have the written authority and obligation to enforce the Code of Conduct. Such officer shall certify, by affidavit, Code of Conduct compliance by all employees after each competitive process ends.

e. Further steps may be considered, as appropriate, or ordered by the Commission.

10. Where the utility seeks to advance its proposed facilities (i.e., over those of other developers who may submit bids in its RFP), its proposal must satisfy all the criteria applicable to non-utility bidders, including but not limited to providing all information required by the RFP, and being capable of implementation.

11. Bids submitted by affiliates shall be held to the same contractual and other standards as projects advanced by other bidders.

I. TRANSMISSION INTERCONNECTION AND UPGRADES

1. A winning bidder has the right to interconnect its generation to the electric utility's transmission system, and to have that transmission upgraded as necessary to accommodate the output of its generation.

2. With respect to procedures and methodologies for:

   a. Designing interconnections;

   b. Allocating the cost of interconnections;

   c. Scheduling and carrying out the physical implementation of interconnections;

   d. Identifying the need for transmission upgrades;

   e. Allocating the cost of transmission upgrades; and

   f. Scheduling and carrying out the physical implementation of transmission upgrades;

   the electric utility shall treat all bidders, including its own bid and that of any affiliate, in a comparable manner.

3. Upon the request of a prospective bidder, the electric utility shall provide general information about the possible interconnection and transmission upgrade costs associated with project locations under consideration by the bidder.

4. In a compliance filing to be made within ninety days after issuance of this Framework, the electric utility shall submit a proposed tariff containing procedures for interconnection and transmission upgrades, to ensure comparable treatment among bidders including any electric utility or electric utility affiliate bid. This submission shall contain at least the following elements:

   a. A formal queuing process that ensures nondiscriminatory, auditable treatment of all requests for interconnection, upgrades and studies thereof;

   b. A means, if practical, of minimizing the cost of studies by bundling different requests into a single study;

   c. A methodology for allocating the costs of interconnection and transmission upgrades between the electric utility and the generator; and

   d. A process for obtaining information on current capacity, operations, maintenance and expansion plans relating to the transmission and distribution systems.

5. To ensure comparable treatment, [an] **the** Independent Observer [expert in interconnection and transmission upgrades, selected and contracted for in the same manner as the Independent Observer described in Part III.C.6, above,] shall review and monitor the electric utility's policies, methods and implementation and report to the Commission.

V. DISPUTE RESOLUTION PROCESS

The Commission will serve as an arbiter of last resort, after the utility, Independent Observer, and bidders have attempted to resolve any dispute or pending issue. The Commission will use an informal expedited process to resolve the dispute within thirty (30) days, as described in Part III.B.8. There shall be no right to hearing or appeal from this informal expedited dispute resolution process. The Commission encourages affected parties to seek to work cooperatively to resolve any dispute or pending issue, perhaps with the assistance of an Independent Observer, who may offer to mediate but who has no decision-making authority. The utility and Independent Observer shall conduct informational meetings with the Commission and Consumer Advocate to keep each apprised of issues that arise between or among the parties.

VI. PARTICIPATION BY THE HOST UTILITY

A. Where the electric utility is addressing a need for firm capacity in order to address system reliability issues or concerns:

1. In general, the utility shall develop a project proposal that is responsive to the resource need identified in the RFP. The proposal shall represent the utility's best ("self-build" or "utility-owned") response to that need in terms of foreseeable costs and other project characteristics.

2. If the utility opts not to advance its own project (i.e., over those of other developers), the utility shall request and obtain the Commission's approval. In making this request, the utility:

   a. Shall demonstrate why relying on the market to provide the needed resource is prudent, and such demonstration shall include evidence of the number of viable sellers the utility expects will compete;

   b. Shall develop a Contingency Plan to respond in a reasonable timeframe if the competitive bidding process unexpectedly fails to produce a viable project proposal; and

   c. If necessary, shall identify a Parallel Plan that is capable of being implemented, to the extent feasible, after an appropriate amount of

planning, which may or may not be the supply-side resource or resources in the [approved]**Approved** IRP.

B. Where the RFP process has as its focus something other than a reliability-based need, the utility may choose (or decline) to advance its own project proposal either in the form of a self-build or utility-owned project.

C. If the RFP process results in the selection of non-utility (or third-party) projects to meet a system reliability need or statutory requirement, the utility shall develop and periodically update its Contingency Plan and, if necessary, its Parallel Plan to address the risk that the third-party projects may be delayed or not completed. When submitting the RFP to the Commission, the electric utility shall separately submit, to the extent practical, a description of such activities and a schedule for carrying them out. Such description shall be updated as appropriate.

1. The plans may include the identification of milestones for such projects, and possible steps to be taken if the milestones are not met.

2. Pursuant to the plans, it may be appropriate for the utility to proceed to develop a self-build or utility-owned project or projects until such action can no longer be justified as reasonable. The self-build or utility-owned project(s) may differ from the project(s) advanced by the utility in the RFP process, or the resource(s) identified in its [approved]**Approved** IRP Plan.

3. The contracts developed for the RFP process to acquire third-party resources shall include commercially reasonable provisions that address delays or non-completion of third-party projects, such as provisions that identify milestones for the projects, seller (i.e., bidder) obligations, and utility remedies if the milestones are not met, and may include provisions to provide the utility with the option to purchase the project under certain circumstances or events of default by the seller (i.e., the bidder).

D. A utility shall not advance mutually exclusive projects in response to an identified need.

VII. RATEMAKING

A. The costs that an electric utility reasonably and prudently incurs in designing and administering its competitive bidding processes are recoverable through rates to the extent reasonable and prudent.

B. The costs that an electric utility incurs in taking reasonable and prudent steps to implement Parallel Plans and Contingency Plans are recoverable through the

utility's rates, to the extent reasonable and prudent, as part of the cost of providing reliable service to customers.

C. The reasonable and prudent capital costs that are part of an electric utility's Parallel Plans and Contingency Plans shall be accounted for similar to costs for planning other capital projects (provided that such accounting treatment shall not be determinative of ratemaking treatment):

1. Such costs would be accumulated as construction work in progress, and carrying costs would accrue on such costs. If the Parallel Plans or Contingency Plans, as implemented, result in the addition of planned resources to the utility system, then the costs incurred and accrued carrying charges would be capitalized as part of the installed resources (i.e., recorded to plant-in-service) and added to rate base. The costs would be depreciated over the life of the resource addition.

2. If implementation of the Parallel Plans or Contingency Plans is terminated before the resources identified in such plans are placed into service, the costs incurred and accrued carrying charges included in construction work in progress would be transferred to a miscellaneous deferred debit account and the balance would be amortized to expense over five years (or a reasonable period determined by the Commission), beginning when the base plan resource is placed into service. The amortization expense would be included in the utility's revenue requirement when there is a general rate case. Under appropriate circumstances, the Commission may allow additional carrying costs to accrue on the unamortized miscellaneous deferred balance.

D. The regulatory treatment of utility-owned or self-build facilities will be cost-based, consistent with traditional cost-of-service ratemaking, wherein prudently incurred capital costs are included in rate base; provided that the evaluation of the utility's bid must account for the possibility that the capital or running costs actually incurred, and recovered from ratepayers, over the plant's lifetime, will vary from the levels assumed in the utility's bid. Any utility-owned project selected pursuant to the RFP process will remain subject to prudence review in a subsequent rate proceeding with respect to the utility's obligation to prudently implement, construct or manage the project consistent with the objective of providing reliable service at the lowest reasonable cost.

VIII. QUALIFYING FACILITIES

A. For any resource to which the competitive bidding requirement does not apply (due to waiver or exemption), the utility retains its traditional obligation to offer to purchase capacity and energy from a

QF at avoided cost upon reasonable terms and conditions approved by the Commission.

B. For any resource to which the competitive bidding requirement does apply, the utility shall apply to the commission to waive or modify the time periods described in Hawaii Administrative Rules § 6-74-15(c) (1998) for the utility to negotiate with a QF pursuant to the applicable provisions of Hawaii Administrative Rules § 6-74-15(c) (1998), and upon approval of the commission, the utility's obligation to negotiate with a QF shall be deferred pending completion of the competitive bidding process.

1. If a non-QF is the winning bidder:

   a. A QF will have no PURPA right to supply the resource provided by a non-QF winning bidder.

   b. If a non-QF winner does not supply all the capacity needed by the utility, or if a need develops between RFPs that will not be satisfied by an RFP due to a waiver or exemption, a QF, upon submitting a viable offer, is permitted to exercise its PURPA rights to sell at avoided cost. The commission's determination of avoided cost will be bounded by the price level established by the winning non-QF.

2. Where the winning bidder is the utility's self-build option, a QF will not have a PURPA right to supply the resource provided by the utility's self-build option.

3. If a QF is the winning bidder, the QF has the right to sell to the electric utility at its bid price, unless the price is modified in the contract negotiations that are part of the bidding process.

CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 23121 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

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DATED: DEC - 8 2006