



ADMINISTRATIVE RULES OF MONTANA

38.5.2025 REQUIREMENTS FOR COMPETITIVE SOLICITATIONS

- (1) A competitive solicitation issued by a utility shall treat similarly situated bidders similarly and fairly, use understandable processes, and result in decisions and outcomes that are transparent and understandable to bidders, stakeholders, and the Commission.
- (2) A competitive solicitation issued by a utility shall contain:
 - (a) specific minimum bidder requirements for credit and capability;
 - (b) standard form contracts or contract provisions the utility intends to use;
 - (c) specific explanations of bidders' ability to negotiate mutually agreeable final contract terms that are different from the standard form contracts;
 - (d) clear and complete descriptions of the resources, products, and services the utility seeks to acquire;
 - (e) a description of how the solicitation aligns with a resource need shown by the utility's most recent resource plan or a subsequently identified need resulting from a change in circumstances;
 - (f) specific bid evaluation and bidder qualification standards and criteria including a sample evaluation rubric that quantifies, where possible, the weight the utility will give each criterion during the bid ranking procedure; and
 - (g) clear and complete descriptions of how the utility will share information about bid scores, including what information about the bid scores and bid ranking will be provided to bidders and when and how it will be provided.
- (3) A utility's process for evaluating offers or bids in competitive solicitations shall:
 - (a) apply bidder qualification standards and bid evaluation criteria fairly and consistently;
 - (b) allow all bidders to adjust their bids in the event the utility or third-party administrator revises any evaluation standards or criteria;
 - (c) apply a transparent and systematic rating methodology to objectively rank bids with respect to price and, as appropriate, non-price factors. Non-price factors must be objectively quantifiable where practicable. The rating methodology shall be based on information and analyses from a utility's most recent resource plan, any Commission comments on the plan, input from the advisory committee, public comments on the utility's draft solicitation, if applicable input from a third-party administrator, and industry best practices;
 - (d) use the following approach to develop price and non-price scores:

- (i) price scores must be based on the prices submitted by bidders and calculated using units that are appropriate for the resources, products, or services sought and technologies expected to be employed in responsive bids. A third-party administrator may adjust price scores on review of information submitted by bidders;
 - (ii) non-price scores must, when practicable, primarily relate to resource characteristics identified in the utility's most recent resource plan or supplement to the plan and may be based on conformance to standard form contracts. Non-price scoring criteria must be based on a clear, objective rubric that reasonably enables bidders to self-score;
 - (iii) non-price score criteria that seek to identify minimum thresholds for a successful bid and that may readily be converted into minimum bidder requirements must be converted into minimum bidder requirements;
 - (iv) scoring criteria may not be based on renewal or ownership options, except insofar as these options affect costs, revenues, benefits, or prices. Any criteria based on renewal or ownership options must be explained in sufficient detail in the solicitation to allow for public comment and Commission review of the justification for the proposed criteria;
 - (e) document subjective judgments of the utility or the third-party administrator regarding bid scoring and ranking with sufficient detail to enable the utility to demonstrate in a transparent, understandable manner the decision-making process in subsequent regulatory proceedings involving rate recovery;
 - (f) identify a shortlist of offers from bidders with which the utility will pursue contract negotiations. Due diligence regarding bidder qualifications, bidder credit worthiness and experience, and project feasibility shall be completed before selecting an offer for the shortlist. A bidder shall not be informed that its offer is being considered for the shortlist while the utility is performing due diligence. If any bidders on the shortlist are allowed to refresh or supplement their bids in any way, all bidders on the shortlist shall be allowed to do so;
 - (g) conduct and incorporate into the selection of a final short list a sensitivity analysis of bid rankings to evaluate the degree to which the rankings are sensitive to:
 - (i) changes in non-price scores; and
 - (ii) changes in assumptions used to compare bids or portfolios of bids, such as assumptions used to extend shorter bids for comparison with longer bids, or assumptions used to compare smaller bids or portfolios with larger ones;
 - (h) prevent the utility or bidders from reassigning or "flipping" offers from the original bidding entity to another entity;
 - (i) prevent public disclosure of information related to individual bids, including price, before the solicitation process is complete and contracts with the winning bidder(s) have been executed; and
 - (j) facilitate public disclosure of information about the solicitation that is not confidential as defined in ARM 38.2.5001.
- (4) A utility shall obtain and consider input from the advisory committee regarding the appropriate use and selection of a third-party administrator in a competitive solicitation process, including

whether the third-party administrator should be selected through a competitive solicitation. When using a third-party administrator in the competitive solicitation process, a utility shall:

- (a) consult with the third-party administrator on preparation of the solicitation;
 - (b) empower the third-party administrator to oversee the solicitation process to ensure that it is conducted fairly, transparently, and objectively. The utility is responsible for engaging the services of a third-party administrator and for all fees and expenses associated therewith. The utility may request recovery of fees and expenses associated with engaging a third-party administrator in customer rates; and
 - (c) empower the third-party administrator to:
 - (i) assess the reasonableness of bidder qualification and bid evaluation and scoring criteria;
 - (ii) evaluate bids;
 - (iii) select the initial shortlist; and
 - (iv) assess the reasonableness of the utility's final bid selection(s).
- (5) If a competitive solicitation allows bids by the utility or an affiliate of the utility, or bids that may result in a resource owned by the utility, the process must be administered by an independent third-party administrator. The third-party administrator must open, consider, independently evaluate, and score bids received in the solicitation, and assess the unique risks and advantages of utility-owned resource options compared to contractual alternatives considering the following factors:
- (a) potential for construction delays and cost over-runs (considering contractual guarantees, cost and prudence of guarantees, remaining exposure to ratepayers for cost over-runs, and potential benefits of cost under-runs);
 - (b) projected forced outage rates;
 - (c) projected end effect values;
 - (d) projected emissions costs;
 - (e) projected operation and maintenance costs;
 - (f) projected capital additions costs; and
 - (g) projected performance regarding output, heat rate, and power curve.
- (6) A utility shall inquire and determine whether a bidder is an affiliate or will contract with any affiliate. When an affiliate of a utility submits an offer in the utility's competitive solicitation, the following requirements shall be incorporated into the evaluation process:
- (a) Information shall not be provided to an affiliate regarding bid evaluation criteria, bidder qualification criteria, due diligence, or any other relevant resource procurement information unless the same information is simultaneously provided to all other prospective bidders.
 - (b) Any individual who participates in the development of the solicitation or the evaluation or scoring of bids on behalf of the utility shall not be allowed to participate in the preparation

of any offer by an affiliate or to discuss the solicitation process with an affiliate or its representatives in a non-public setting.

- (c) A utility or third-party administrator shall not disclose the contents or results of a solicitation, including information about competing bids, to personnel involved in developing an offer by an affiliate unless such information has been disclosed to the public. Protections against improper disclosure of solicitation information shall be explained in solicitation documents.
- (7) If a utility acquires resources involving affiliate transactions it shall be subject to the following filing requirements in any subsequent application regarding cost recovery under 69-3-301 through 69-3-310, MCA:
- (a) a demonstration that the utility has not subordinated its service obligations in favor of an affiliate;
 - (b) a demonstration that all costs associated with any affiliate transactions are just and reasonable and in the public interest based on a lower of cost or market standard applied at the time of contract execution;
 - (c) a demonstration that costs and revenues are accurately and properly segregated between regulated and non-regulated affiliated entities;
 - (d) an affirmation that books of account and related records of any affiliate transacting business with the utility shall be available for audit and review by the Commission. As reasonable and necessary and when lawful, the Commission will protect affiliate information from public disclosure; and
 - (e) proof that a code of conduct has been implemented to guide management and other employees regarding standards for day-to-day business activities with affiliates and to guard against self-dealing, gaming, and resulting subsidies.
- (8) A third-party administrator must file a closing report in the docket opened in ARM 38.5.2024 after the utility has determined a final shortlist. The closing report must include an overall assessment of the competitive solicitation process including whether selected resources achieve the objective of minimizing costs to customers, considering risks, and whether the process was fair to all bidders.
- (9) The consumer counsel should consider the following guidelines when it decides to engage an independent monitor pursuant to 69-3-1207(4), MCA:
- (a) notify the Commission as soon as practicable following notice by a utility of a decision to issue competitive solicitation if the consumer counsel intends to retain an independent monitor; and
 - (b) provide information needed and requested by the Commission to establish the process by which the Commission will charge a fee to the utility to pay costs incurred by the consumer counsel related to the independent monitor.
- (10) When the consumer counsel engages an independent monitor the utility and the third-party administrator shall allow access by the independent monitor to all information related to the solicitation and the evaluation of offers.

- (11) An independent monitor may file comments addressing the items in 69-3-1207(4)(c), MCA and/or prepare and file a closing report pursuant to 69-3-1207(4)(c)(iv) in the docket initiated in ARM 38.5.2024.
- (12) When a utility acquires resources by means other than a competitive solicitation, it shall thoroughly document the alternative acquisition process, including the assumptions and methods used to assess cost-effectiveness and all factors considered in, and the rationale for, its decision not to use a competitive solicitation.

Authorizing statute(s): 69-3-1204, MCA

Implementing statute(s): 69-3-1204, 69-3-1205, 69-3-1207, 69-3-1208, 69-3-1209, MCA

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