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Arizona Competitive Power Alliance  
Comments to competitive Procurement Issues

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Arizona Corporation Commission  
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1. Whether the Commission should go through a formal Rulemaking to formalize procurement procedures

It is unnecessary to devote the Commission and parties' time and resources to a formal Rulemaking process. The ACC, utilities and parties have already spent years developing procurement policy which, in the Alliance's view requires only minor modifications. The Track B protocols and the Secondary procurement protocols were developed with extensive stakeholder involvement and have a proven record of success. The ACC does not need to change the Secondary Procurement protocols, it simply should clarify that the protocols apply not only when an APS affiliate bids in the RFP, but also when APS itself intends to participate in an RFP. This is a technical clarification of a point that I believe was assumed by the parties all along.

Commissioner Hatch-Miller provided a good summary of the Commissioners' sentiment on the issue right before the open meeting on the Yuma RFP process adjourned. He suggested that the process could be complete in 150 days, and the Alliance agrees with that timeframe. That portion of the transcript is included at the end of these comments.

2. What types of generation, purchase power, or fuel resources should be subject to formalized procurement procedures.

All electric generation and power purchases should be subject to APS's existing Secondary Procurement Protocols.

3. Whether or not an Independent Evaluator should be required as part of the process, and if so, the Independent Evaluator's role in the process.

An Independent Evaluator should be required for all RFPs in which the incumbent or its affiliate is planning to participate, whether by submitting its own bid, or to submit cost estimates that could later be used as a proxy for a bid. The Evaluator's role is to ensure that the incumbent utility follows its protocols, including a functional and physical separation between the personnel responsible for preparing the solicitation materials and those developing the internal cost estimates or bids, prohibiting communication or information sharing between the bid evaluators and the internal bid preparation team, confirming that the incumbent utility submits its bid or cost estimate first, confirming that the bid evaluation team does not give any undue preference to the proposal of any party, including the utility or affiliate, monitoring all communication between the utility and bidders, and providing an appeals mechanism during the RFP process.

4. Any required protocols for the utility self-build or affiliate bid and build options

During the self build moratorium, APS has to prove that the competitive market failed to respond to its needs in order to self build. This is a different standard than APS simply claiming that it can build more cheaply than the lowest bid.

Ultimately, the Commissioners will decide whether the market failed to provide reasonably priced offers. However, if APS is going to submit a bid or use its own internal cost estimates to argue that the market has failed, then APS must follow its Secondary Procurement Protocols and compete just like any other bidder.

For example, APS must establish an independent bid team that does not have access to other bidder's information; it must provide a sealed bid before the other bids are opened and it must bring in an Independent Evaluator to oversee the process.

Additionally, APS must fully disclose at the bidders' conference and in the RFP materials if it intends to submit its internally-generated number as an alternative to the lowest bid, and that APS may elect to pursue a self-build option at the Commission.

This should be an extraordinary circumstance, and not a routine practice.

5. Whether the Commission should have a direct role in the procurement process (i.e. whether the Commission should approve Draft RFPs, the timing of any required Commission proceedings, and cost recovery and prudence issues for utilities)

As long as there is an Independent Evaluator, there should be no requirement for the Commission to approve Draft RFPs. The Commission's oversight role with respect to a determination of whether utility has conducted the procurement fairly and in compliance with the rules and Secondary Procurement Protocol remains important. Also, the Alliance believes that the results of a fairly conducted RFP should be deemed to be prudent and not subject to future hindsight review. The risk of cost overruns will presumably fall on the selected provider, and the RFP evaluation results should be considered sufficient evidence that the result is reasonable and prudent.

6. The design, mechanics, and timing of the RFP, including evaluation criteria to be used

The design, mechanics and timing of the RFP should be left to the incumbent utility. Bidders should have an appeal mechanism by which they can raise issues of concern with the Independent Evaluator and, if need be, to the Commission.

Beyond that, the recent APS self-build project in Yuma revealed an ambiguity in the 2004 APS rate case settlement that should be addressed by the Commission. That is, when APS solicits both PPAs and utility-owned assets in a competitive RFP, the evaluation criteria for that particular RFP should reflect the spirit of the self-build moratorium so that if APS receives reasonably priced offers for either PPAs or for a project to be acquired by APS, that APS be required to select the RFP bidder. Only if APS can demonstrate that the offer received in the RFP is not reasonable can it elect to file an Application for an exception to the self-build moratorium.

7. The interaction of a formalized procurement process with a utility which is presently subject to a building moratorium

The answers above apply to this question as well. The 2004 APS rate case settlement sets forth a process for dealing with procurement during the moratorium, but needs further clarification as discussed in question 6. The issue is not the self-build moratorium, but rather how to conduct a fair RFP. If the incumbent utility or its affiliate wants to participate in the RFP, then the consumer safeguards that were developed in Track B and the Secondary Procurement Protocols need to be in place.

8. Protocols for the process of evaluating RFPs that insure integrity of the process

The incumbent utility needs to bid first and the incumbent bid evaluation team must be segregated from the bid preparation team. No sharing of cost information, bid information or other information should be allowed.

Additionally, when the RFP bids are being compared, staff and the Independent Evaluator must have objective criteria to ensure that the winning bid selected is indeed the best for consumers. This issue is not as critical if the incumbent is not participating.

These factors would be difficult to codify in protocols, but the analysis should be made available to staff and the Independent Evaluator, along with any non-competitive bid information. Also, since power pricing information becomes stale very quickly, the Commission should consider making the basic information available six months or a year, after the winner is selected.

9. How confidential and trade secret information provided by bidders should be handled.

Confidential bidder information should remain confidential from other bidders and bid preparers, including within the incumbent utility and its affiliates. However, as mentioned in response 8, some of the information may eventually be made public in order to assess the fairness of the process in retrospect.

10. Whether and to what extent there should be bid fees, or other prequalification requirements for bidders

Bid fees should provide a hurdle to eliminate frivolous bids, and should be refundable. The cost of the RFP should be part of the cost of the project.

11. The treatment of "non-conforming" proposals

Non-conforming proposals should be evaluated and if they are dismissed, the reasons for the dismissal should be provided to the bidder, the Independent Evaluator, Staff and the ACC.

12. What to do about bids received outside the RFP process

Bids received outside of the RFP process should be rejected. TR: Do we really care about this? What about spot purchases, exchanges, etc. They might be interpreted to meet the definition of "outside the RFP process." Maybe we should expand/clarify this response.

13. How to handle demand-side management and renewable proposals and the evaluation criteria for each to insure that the value of each is fairly reflected

These issues are very complex and would substantially expand the scope of this proceeding. They are better handled in the Resource Planning workshop that will be conducted on June 22<sup>nd</sup>. Comments for those workshops are due May 25, 2007

14. Whether the procurement process should be tailored to interact with a utility's integrated resource plan, should the Commission begin to require the filing of such plans

This issue is worthy of discussion and should be included in the June 23<sup>rd</sup> broader workshop.

15. The adoption of "Codes of Conduct" and "Best Practices" procedures by the utility

Yes, this issue should be on the agenda.

16. What waivers or exceptions to this process should be adopted

No.

17. Other issues related to competitive procurement

No.

Commissioner Hatch-Miller's Comments applicable to question number 1.

17 COM. HATCH-MILLER: Mr. Chairman, let me ask  
18 something of us here, though. I would like to be real  
19 close to this. If there is one that is going to start  
20 going on, I would like to be real close, as a  
21 Commissioner, to the process of developing the new bid  
22 and also the new process by which those bids will be  
23 obtained and evaluated because I think we need to be  
24 clear, this is the first case study that we have right  
25 now before us.

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1 In the next 150 days, we want to have a way to  
2 go about this. Hopefully the way we'll eventually go  
3 about it will be very close to the way that's developed  
4 out of these discussions now.

5 I agree, I'm not ready to vote on an amendment  
6 today because I don't know that we can get the right one,

7 and it screws up this order and doesn't improve the  
8 situation.

9           Is APS willing to let this Commission get close  
10 to the next RFP process?

11           MR. ROBINSON: Commissioner Hatch-Miller, APS is  
12 willing to let the Commission get involved in anything it  
13 wants to get involved in.

14           We're continuing to solicit -- the thing I don't  
15 want overlooked in this is we've been doing continual  
16 RFPs since the settlement, and this is the first one  
17 we've had an issue in. We'll probably secure more power  
18 from the market that won't have to come to you because  
19 it's not a self-build option. That will probably  
20 continue as we go forward from here.

21           But, I mean, we're more than happy to work with  
22 you and others on whatever you would like.

23           COM. HATCH-MILLER: Well, I am concerned about  
24 the self-build option.

25           MR. ROBINSON: I understand.