

CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS.

Subchapter K. RELATIONSHIPS WITH AFFILIATES.

§25.273. Contracts Between Electric Utilities and Their Competitive Affiliates.

- (a) **Purpose.** This section establishes the requirements for the implementation of contracts between utilities and their competitive affiliates resulting from a fair, competitive bidding process.
- (b) **Application.**
- (1) **General application.** This section applies to:
 - (A) electric utilities operating in the State of Texas as defined in the Public Utility Regulatory Act (PURA) §31.002(6), and transactions or activities between electric utilities and their affiliates, as defined in PURA §11.003(2); and
 - (B) transmission and distribution utilities operating in a qualifying power region in the State of Texas as defined in PURA §31.002(19) upon commission certification of a qualifying power region pursuant to PURA §39.152, and transactions or activities between transmission and distribution utilities and their affiliates, as defined in PURA §11.003(2).
 - (2) **No circumvention of the code of conduct.** An electric utility, transmission and distribution utility, or competitive affiliate shall not circumvent the provisions or the intent of PURA §39.157 or any rules implementing that section by using any affiliate to provide information, services, products, or subsidies between the electric utility, transmission and distribution utility, and a competitive affiliate.
 - (3) **Notice of conflicts and/or petition for waiver.** Nothing in this section is intended to affect or modify the obligation or duties relating to any rules or standards of conduct that may apply to a utility or the utility's affiliates under orders or regulations of the Federal Energy Regulatory Commission (FERC) or the Securities and Exchange Commission (SEC). A utility shall file with the commission a notice of any provision in this section that conflicts with FERC or SEC orders or regulations. A utility that is subject to statutes or regulations in any state that conflict with a provision of this section may petition the commission for a waiver of the conflicting provision on a showing of good cause.
- (c) **Definitions.** Any terms defined in §25.272 of this title (relating to Code of Conduct for Electric Utilities and Their Affiliates) have the same meanings herein.
- (d) **Competitive bidding required.** A utility shall conduct competitive bidding, as required by §25.272 of this title, to procure products and services, other than corporate support services, that are offered by an competitive affiliate or to sell to any competitive affiliate assets that have a per unit value of more than \$75,000, or a total value of more than \$1 million. This section does not apply to transfers that facilitate unbundling under PURA §39.051 or asset valuation under PURA §39.262.
- (1) **Notice.** The utility shall provide reasonable notice of any request for proposals required pursuant to this section. Such notice shall include:
 - (A) notice by publication in trade journals or newspapers as appropriate;
 - (B) notice by mail to persons who previously requested to be notified of the request for proposals; and
 - (C) conspicuous notice on the utility's Internet site or other public electronic bulletin board.
 - (2) **Independent evaluator.** The utility shall use an independent evaluator when a competitive affiliate's bid is included among the bids to be evaluated. If an independent evaluator is required, the utility shall maintain a record of communications with the independent evaluator. The independent evaluator shall identify in writing the bids that are most advantageous and warrant negotiation and contract execution, in accordance with the criteria set forth in the request for proposals. The utility retains responsibility for final selection of products or services.

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§25.273(d) continued

- (3) **Competitive bidding procedures.** The utility shall make a request for proposals available to interested persons by conspicuously posting the request on its Internet site or other public electronic bulletin board.
 - (A) The request for proposals must clearly set forth the eligibility and selection criteria and shall specify the weight to be given to any non-cost selection criteria.
 - (B) The utility shall strictly enforce the criteria specified in the request for proposals.
 - (4) **Evaluation of bids.** The utility or independent evaluator, as appropriate, shall evaluate each bid submitted in accordance with the criteria specified in the request for proposals. The utility or independent evaluator may not give preferential treatment or consideration to any bid.
 - (5) **Rejection of bids.** The utility is not required to accept a bid and may reject any or all bids in accordance with the selection criteria specified in the request for proposals.
- (e) **Contracts.** A utility shall file with the commission a signed copy of any contracts entered into with a competitive affiliate as the result of the fair, competitive bidding process described in this section. A contract shall include, at a minimum, the following provisions:
- (1) the effective date of the agreement and parties to the agreement;
 - (2) the term of the agreement;
 - (3) a narrative describing the products or services provided to the utility, including a list by specific service of all the affiliated companies who provide or receive these services, or a narrative describing the assets being sold by the utility to the competitive affiliate;
 - (4) the obligations of the parties;
 - (5) the price for those products, services, or assets governed by the contract; and
 - (6) billing and payment procedures.