

**§3484. Procurement methods**

**1. Initial competitive procurement.** The following standards and methods apply to the initial competitive procurement of distributed generation resources associated with commercial or institutional customer accounts under section 3485 and of shared distributed generation resources under section 3486:

A. On or before January 1, 2020, the commission shall adopt rules for each initial competitive solicitation of the first block of distributed generation resources under sections 3485 and 3486. The rules must include the form of contract provided under subsection 7; [PL 2019, c. 478, Pt. B, §1 (NEW).]

B. The commission shall accept bids for 30 calendar days beginning on or before July 1, 2020 and review the bids based on the requirements under subsections 4, 5 and 6. The commission may select qualified bids in excess of the first block if the commission determines that the incremental procurement is in the public interest. If the commission selects qualified bids in excess of the first block, the commission shall reduce the quantity procured in subsequent block procurements. If the commission selects bids totaling less than the first block in the initial competitive procurement, the quantity procured in subsequent block procurements must increase by the difference between the first block and the number of megawatts submitted in the initial competitive procurement. If pursuant to subsections 4 and 5 no bids are accepted, the commission shall:

- (1) Conduct a new initial competitive procurement under this subsection within 9 months; and
- (2) Study the reasons for the inability of the procurement to secure the target amount and submit a report of its findings and any recommended legislation to the joint standing committee of the Legislature having jurisdiction over energy matters; [PL 2019, c. 478, Pt. B, §1 (NEW).]

C. The commission shall issue a public notice of the initial competitive procurement results no later than 30 calendar days after the bid acceptance period has ended. The public notice must include the name, sponsor, size and location of each selected project and the awarded contract price; and [PL 2019, c. 478, Pt. B, §1 (NEW).]

D. The applicable standard buyer shall enter into a contract with the selected project or projects for a term of 20 years at a specified contract rate equal to the clearing price to be paid as a bill credit to the commercial or institutional customer or the subscribers of a shared distributed generation resource, as applicable. [PL 2019, c. 478, Pt. B, §1 (NEW).]

[PL 2019, c. 478, Pt. B, §1 (NEW).]

**2. Subsequent block contract rate procurements.** Subsequent to the initial competitive procurement under subsection 1, the remaining procurement under sections 3485 and 3486 must proceed pursuant to the following:

A. The commission shall procure 4 additional blocks of contracted distributed generation resources to meet the overall procurement goal specified in section 3485 for commercial or institutional distributed generation resources and in section 3486 for shared distributed generation resources. Each procurement block size equals 1/4 of the difference between the overall procurement goal and the quantity procured under subsection 1. These blocks are numbered sequentially, starting with 2. Subsequent procurements are assigned to a particular block, starting with procurement block 2 and finishing with procurement block 5; [PL 2019, c. 478, Pt. B, §1 (NEW).]

B. The block contract rate for procurement block 2 must equal 97% of the clearing price determined in subsection 1. Each successive procurement block must have a block contract rate equal to 97% of the preceding block; [PL 2019, c. 478, Pt. B, §1 (NEW).]

C. Block 2 must be opened immediately following the initial competitive procurement for bids qualifying under subsection 4; [PL 2019, c. 478, Pt. B, §1 (NEW).]

D. The applicable standard buyer shall enter into a contract with each qualified project for a term of 20 years at a specified contract rate equal to the block contract rate of the procurement block then open and paid as a bill credit to the commercial or institutional customer or the subscribers of a shared distributed generation resource, as applicable; [PL 2019, c. 478, Pt. B, §1 (NEW).]

E. Each contract awarded pursuant to this subsection reduces the available capacity in the current procurement block. If an awarded contract exceeds the remaining capacity of its procurement block, then that block is closed and the next block opened and the contract rate is set at the block contract rate for the block filled by this award and any overprocurement in one block is subtracted from the quantity available in the next block. If a contract award exceeds the capacity of procurement block 5, the entire quantity of the offer is awarded at the block contract rate for procurement block 5 and no further contracts may be awarded except under subsection 7; and [PL 2019, c. 478, Pt. B, §1 (NEW).]

F. The commission may by rule establish incentives in the procurement of distributed generation resources including, but not limited to, incentives to support resources that pair with energy storage systems, development of dual-use projects, siting of resources that provide locational benefits to the distribution system and other siting criteria developed in consultation with the Department of Environmental Protection and the Department of Agriculture, Conservation and Forestry. [PL 2019, c. 478, Pt. B, §1 (NEW).]

[PL 2019, c. 478, Pt. B, §1 (NEW).]

**3. Failure to complete timely procurement.** If any procurement block remains unfilled for more than 12 months from the time the previous block was filled:

A. The commission shall suspend procurements under subsection 2 pending completion of the process described in this subsection; [PL 2019, c. 478, Pt. B, §1 (NEW).]

B. The commission shall review and may amend the rules adopted under subsection 1, paragraph A or the standard contract under subsection 7 for a new competitive procurement of long-term contracts for the output of at least the first block of distributed generation resources as part of the procurement goal in section 3485, subsection 1 or section 3486, subsection 1. The commission shall publish any amendments and a new bid acceptance period for not less than 6 months and not more than 9 months; [PL 2019, c. 478, Pt. B, §1 (NEW).]

C. The commission shall accept bids for 30 calendar days from the date established in paragraph B and review the bids based on the requirements set forth in subsections 4, 5 and 6 and the adopted rules. The commission may select qualified bids in excess of the first block if the commission determines that the incremental procurement is in the public interest and the incremental procurement reduces the quantity procured in subsequent procurements; [PL 2019, c. 478, Pt. B, §1 (NEW).]

D. The commission shall issue a public notice of the procurement results no later than 30 calendar days after the bid acceptance period under paragraph C has ended. The public notice must include the name, sponsor, size and location of each selected project and the awarded contract price; [PL 2019, c. 478, Pt. B, §1 (NEW).]

E. The applicable standard buyer shall enter into a contract with the project or projects selected under paragraph C for a term of 20 years at a specified contract rate equal to the highest selected offer rate as adjusted under subsection 6 to be paid as a bill credit to the commercial or institutional customer or the subscribers of a shared distributed generation resource, as applicable; [PL 2019, c. 478, Pt. B, §1 (NEW).]

F. The commission shall reopen procurements under subsection 2 unless no contracts are awarded under paragraph E. The quantity procured under paragraph C must be subtracted from the current procurement block and the block contract rate for that procurement block must be set at the clearing price set under paragraph E. The block contract rate for each subsequent procurement block must be set at 97% of the newly established rate for the preceding procurement block; and [PL 2019, c. 478, Pt. B, §1 (NEW).]

G. If no contracts are awarded under paragraph E, the commission shall:

(1) Conduct another competitive solicitation under this subsection with the bid acceptance period to open approximately 12 months after the bid acceptance period determined in paragraph B; and

(2) Examine the reasons for the inability of the procurement to secure the target amount and submit a report of its findings and any recommended legislation to the joint standing committee of the Legislature having jurisdiction over energy matters. [RR 2019, c. 1, Pt. A, §52 (AMD).]

[PL 2019, c. 478, Pt. B, §1 (NEW); RR 2019, c. 1, Pt. A, §52 (COR).]

**4. Bid or offer qualification.** The commission shall establish minimum requirements for bids or offers in a solicitation under this section, including:

A. Demonstration of site control; [PL 2019, c. 478, Pt. B, §1 (NEW).]

B. A fully executed interconnection service agreement with an investor-owned transmission and distribution utility; [PL 2019, c. 478, Pt. B, §1 (NEW).]

C. Demonstration that all required federal, state and local approvals and nonministerial permits for the project have been obtained. For the purposes of this paragraph, "nonministerial permit" means a permit for which one or more officials consider various factors and exercise discretion in deciding whether to issue or deny the permit; [PL 2019, c. 478, Pt. B, §1 (NEW).]

D. The capacity to make a financial assurance deposit at the time a contract is signed; and [PL 2019, c. 478, Pt. B, §1 (NEW).]

E. The following requirements based on the procurement type:

(1) For a commercial or institutional distributed generation resources procurement, if a participating commercial or institutional customer is not the party making the bid, an agreement from a customer that would receive bill credits under section 3485, subsection 2; and

(2) For a shared distributed generation resources procurement, demonstration of experiencing fulfilling the obligation to subscribers of shared distributed generation resources. [PL 2019, c. 478, Pt. B, §1 (NEW).]

The commission may by rule require a bidder to pay a reasonable bidding fee to defray administrative costs.

[PL 2019, c. 478, Pt. B, §1 (NEW).]

**5. Ensuring competition.** Prior to each solicitation under subsections 1 to 3, the commission shall establish standards to ensure that the solicitation has a sufficient number of unique bidders and quantity of qualified bids to be determined competitive. If the commission concludes that a solicitation is not competitive, the commission may reduce the target procurement quantities to produce the greatest quantity that may be procured consistent with this subsection and shall defer to subsequent solicitations the capacity reduced in the solicitation.

[PL 2019, c. 478, Pt. B, §1 (NEW).]

**6. Bid selection.** Following a review of bids received in the solicitations under subsections 1 to 3, and after any adjustment to the target quantity under subsection 5, the commission shall select one or

more winning bids that, in the aggregate, meet the target procurement quantity. If there are multiple qualified bids at the same offer rate, the commission shall give preference to the qualified bid or bids that minimize the cost to the standard buyers or, if there is no difference in cost, to the bid that was submitted first.

In evaluating bids in a competitive solicitation, the commission shall evaluate a qualified bid for a project that is located on previously developed or impacted land at 90% of the offered rate. For the purposes of this subsection, "previously developed or impacted land" means areas covered by impervious surfaces, capped landfills or brownfield sites as defined by the Department of Environmental Protection. If a bid under this subsection is accepted, the contract rate for each accepted bid for a project located on previously developed or impacted land must be paid a rate equal to the clearing price.

[PL 2019, c. 478, Pt. B, §1 (NEW).]

**7. Standard contract and milestones.** Prior to a solicitation, the commission shall provide, in consultation with the standard buyer or standard buyers, a standard contract that commits the standard buyer and a project sponsor to commercially reasonable behavior and includes provisions including an interconnection fee list and interconnection schedule to ensure that the project proceeds to commercial operation on a reasonable timeline. The standard contracts for all standard buyers must be substantially identical to the extent commercially reasonable.

A qualified project must be commercially operable within 18 months of being awarded a contract. The commission may grant an extension for good cause. If a project fails to meet a milestone, the project sponsor is in default and the sponsor's contract must be cancelled. The capacity associated with a cancelled project must be added to the currently open procurement block. If procurement block 5 has been filled and procurements closed, the defaulted quantity must be added to procurement block 5 and new offers must be accepted under subsection 2.

[PL 2019, c. 478, Pt. B, §1 (NEW).]

#### SECTION HISTORY

PL 2019, c. 478, Pt. B, §1 (NEW). RR 2019, c. 1, Pt. A, §52 (COR).

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