

February 24, 2020

***VIA ELECTRONIC FILING***

Public Utility Commission of Oregon  
201 High Street SE, Suite 100  
Salem, OR 97301-3398

Attn: Filing Center

**RE: UM \_\_\_\_—PacifiCorp’s Application for Approval of 2020 All-Source Request for Proposals**

PacifiCorp d/b/a Pacific Power (PacifiCorp or the Company) submits for filing with the Public Utility Commission of Oregon (Commission) an application requesting the Commission open a docket for approval of a solicitation process for new resources and to appoint an independent evaluator (IE) to oversee the request for proposal (RFP) process and approval of the scoring and modeling for the draft RFP. This RFP process is responsive to the resource needs identified in the Company’s 2019 Integrated Resource Plan (IRP) filing; review of the 2019 IRP is ongoing in Commission docket LC 70.

The Company notes that at the Commissioner workshop held on February 13, 2020 in docket LC 70, the Commission and its staff questioned whether the amount of capacity acquired pursuant to this RFP should be capped (in total or by resource type) to better align with the need identified in the 2019 IRP. This issue is not directly relevant to selection of the IE; however, the company raises this issue at this time so it may be included in discussions at any upcoming workshops scheduled in either LC 70 or in this proceeding as part of the RFP development process, after selection of the IE. The enclosed application includes a proposed timeline for the RFP development process that includes workshops with the Commission and stakeholders; a special public meeting, public hearing, and Commission work session is also scheduled for March 10, 2020, in docket LC 70. Any of these meetings would provide reasonable opportunities to continue discussions regarding whether limits should be placed on the RFP prior to its issuance. The Company looks forward to continued discussions on this issue.

PacifiCorp respectfully requests that all communications related to this filing be addressed to:

Oregon Dockets  
PacifiCorp  
825 NE Multnomah Street, Suite 2000  
Portland, OR 97232  
[oregondockets@pacificorp.com](mailto:oregondockets@pacificorp.com)

Jessica Buno Ralston  
Attorney  
825 NE Multnomah Street, Suite 2000  
Portland, OR 97232  
[jessica.ralston@pacificorp.com](mailto:jessica.ralston@pacificorp.com)

In addition, PacifiCorp respectfully requests that all data requests in this docket be addressed to:

By email (preferred): [datarequest@pacificorp.com](mailto:datarequest@pacificorp.com)

By regular mail: Data Request Response Center  
PacifiCorp  
825 NE Multnomah Street, Suite 2000  
Portland, Oregon 97232

Informal questions concerning this filing may be directed to Cathie Allen at (503) 813-5934.

Sincerely,



Etta Lockey  
Vice President, Regulation

Enclosure

## CERTIFICATE OF SERVICE

I certify that I filed a true and correct copy of PacifiCorp's **Application to Open Independent Evaluator Selection Docket** on the parties listed below via electronic mail and/or overnight delivery in compliance with OAR 860-001-0180.

### Service List LC 70

GAIL CARBIENER 2920 NE CONNERS AVE APT 207 BEND, OR 97701 <a href="mailto:mcgccarb@bendbroadband.com">mcgccarb@bendbroadband.com</a>	ANNA KIM (C) PUBLIC UTILITY COMMISSION OF OREGON P O BOX 1088 SALEM, OR 97308 <a href="mailto:anna.kim@state.or.us">anna.kim@state.or.us</a>
PATRICIA WEBER PO BOX 1375 CORVALLIS, OR 97339 <a href="mailto:trish.weber@gmail.com">trish.weber@gmail.com</a>	
<b>ALLIANCE OF WESTERN ENERGY CONSUMERS</b>	
TYLER C PEPPE (C) DAVISON VAN CLEVE 1750 SW HARBOR WAY STE 450 PORTLAND, OR 97204 <a href="mailto:tcp@dvclaw.com">tcp@dvclaw.com</a>	BRADLEY MULLINS (C) MOUNTAIN WEST ANALYTICS 1750 SW HARBOR WAY STE 450 PORTLAND, OR 97201 <a href="mailto:brmullins@mwanalytics.com">brmullins@mwanalytics.com</a>
BRENT COLEMAN (C) 1750 SW HARBOR WAY, SUITE 450 PORTLAND, OR 97201 <a href="mailto:blc@dvclaw.com">blc@dvclaw.com</a>	
<b>COALITION</b>	
MARIE P BARLOW SANGER LAW PC 1041 SE 58TH PLACE PORTLAND, OR 97215 <a href="mailto:marie@sanger-law.com">marie@sanger-law.com</a>	JOHN LOWE RENEWABLE ENERGY COALITION 12050 SW TREMONT ST PORTLAND, OR 97225-5430 <a href="mailto:jravenesanmarcos@yahoo.com">jravenesanmarcos@yahoo.com</a>
IRION A SANGER SANGER LAW PC 1041 SE 58TH PLACE PORTLAND, OR 97215 <a href="mailto:irion@sanger-law.com">irion@sanger-law.com</a>	

<b>NATIONAL GRID</b>	
NATHAN SANDVIG NATIONAL GRID USA 205 SE SPOKANE ST, STE 300 PORTLAND, OR 97202 <a href="mailto:nathan.sandvig@nationalgrid.com">nathan.sandvig@nationalgrid.com</a>	MONICA SCHWEBS MORGAN, LEWIS & BOCKIUS LLP ONE MARKET SPEAR STREET TOWER SAN FRANCISCO, CA 94105 <a href="mailto:monica.schwebs@morganlewis.com">monica.schwebs@morganlewis.com</a>
JACK STODDARD MORGAN LEWIS & BOCKIUS ONE MARKET SPEAR STREET TOWER SAN FRANCISCO, CA 94105 <a href="mailto:fjackson.stoddard@morganlewis.com">fjackson.stoddard@morganlewis.com</a>	
<b>NIPPC</b>	
CAROL OPATRYNY NORTHWEST & INTERMOUNTAIN POWER PRODUCERS COALITION 18509 NE CEDAR DR BATTLE GROUND, WA 98604 <a href="mailto:ccopat@e-z.net">ccopat@e-z.net</a>	
<b>NW ENERGY COALITION</b>	
WENDY GERLITZ (C) NW ENERGY COALITION 1205 SE FLAVEL PORTLAND, OR 97202 <a href="mailto:wendy@nwenergy.org">wendy@nwenergy.org</a>	FRED HEUTTE (C) NW ENERGY COALITION PO BOX 40308 PORTLAND, OR 97240-0308 <a href="mailto:fred@nwenergy.org">fred@nwenergy.org</a>
<b>OREGON CITIZENS UTILITY BOARD</b>	
OREGON CITIZENS' UTILITY BOARD 610 SW BROADWAY, STE 400 PORTLAND, OR 97205 <a href="mailto:dockets@oregoncub.org">dockets@oregoncub.org</a>	MICHAEL GOETZ (C) OREGON CITIZENS' UTILITY BOARD 610 SW BROADWAY STE 400 PORTLAND, OR 97205 <a href="mailto:mike@oregoncub.org">mike@oregoncub.org</a>
ROBERT JENKS (C) OREGON CITIZENS' UTILITY BOARD 610 SW BROADWAY, STE 400 PORTLAND, OR 97205 <a href="mailto:bob@oregoncub.org">bob@oregoncub.org</a>	

<b>OREGON DEPARTMENT OF ENERGY</b>	
PATRICK ROWE (C) (W) OREGON DEPARTMENT OF ENERGY 1162 COURT ST NE SALEM, OR 97301 <a href="mailto:patrick.g.rowe@doj.state.or.us">patrick.g.rowe@doj.state.or.us</a>	JASON SIERMAN (C) (W) OREGON DEPARTMENT OF ENERGY 550 CAPITOL STREET NE SALEM, OR 97301 <a href="mailto:jason.sierman@oregon.gov">jason.sierman@oregon.gov</a>
WENDY SIMONS (C) (W) OREGON DEPARTMENT OF ENERGY 550 CAPITOL ST NE 1ST FL SALEM, OR 97301 <a href="mailto:wendy.simons@oregon.gov">wendy.simons@oregon.gov</a>	
<b>PACIFICORP</b>	
ETTA LOCKEY (C) (HC) PACIFIC POWER 825 NE MULTNOMAH ST., STE 2000 PORTLAND, OR 97232 <a href="mailto:etta.lockey@pacificorp.com">etta.lockey@pacificorp.com</a>	JESSICA RALSTON (C) (HC) PACIFIC POWER 825 NE MULTNOMAH STE 1800 PORTLAND, OR 97232 <a href="mailto:jessica.ralston@pacificorp.com">jessica.ralston@pacificorp.com</a>
PACIFICORP, DBA PACIFIC POWER 825 NE MULTNOMAH ST, STE 2000 PORTLAND, OR 97232 <a href="mailto:oregondockets@pacificorp.com">oregondockets@pacificorp.com</a>	
<b>PORTLAND GENERAL ELECTRIC</b>	
ERIN APPERSON PORTLAND GENERAL ELECTRIC 121 SW SALMON ST - 1WTC1301 PORTLAND, OR 97204 <a href="mailto:erin.apperson@pgn.com">erin.apperson@pgn.com</a>	ELAINE HART PORTLAND GENERAL ELECTRIC 121 SW SALMON ST, 3WTC0306 PORTLAND, OR 97204 <a href="mailto:elaine.hart@pgn.com">elaine.hart@pgn.com</a>
JAY TINKER PORTLAND GENERAL ELECTRIC 121 SW SALMON ST 1WTC-0306 PORTLAND, OR 97204 <a href="mailto:pge.opuc.filings@pgn.com">pge.opuc.filings@pgn.com</a>	
<b>RENEWABLE NW</b>	
SILVIA TANNER (C) RENEWABLE NORTHWEST 421 SW 6TH AVE, STE 975 PORTLAND, OR 97204 <a href="mailto:silvia@renewablenw.org">silvia@renewablenw.org</a>	MAX GREENE RENEWABLE NORTHWEST 421 SW 6TH AVENUE STE. 975 PORTLAND, OR 97204 <a href="mailto:max@renewablenw.org">max@renewablenw.org</a>
RENEWABLE NORTHWEST 421 SW 6TH AVE., STE. 975 PORTLAND, OR 97204 <a href="mailto:dockets@renewablenw.org">dockets@renewablenw.org</a>	

<b>SBUA</b>	
JAMES BIRKELUND SMALL BUSINESS UTILITY ADVOCATES 548 MARKET ST STE 11200 SAN FRANCISCO CA 94104 <a href="mailto:james@utilityadvocates.org">james@utilityadvocates.org</a>	DIANE HENKELS SMALL BUSINESS UTILITY ADVOCATES 621 SW MORRISON ST. STE 1025 PORTLAND OR 97205 <a href="mailto:diane@utilityadvocates.org">diane@utilityadvocates.org</a>
<b>SIERRA CLUB</b>	
ANA BOYD (C) SIERRA CLUB 2101 WEBSTER ST STE 1300 OAKLAND, CA 94612 <a href="mailto:ana.boyd@sierraclub.org">ana.boyd@sierraclub.org</a>	GLORIA D SMITH (C) SIERRA CLUB LAW PROGRAM 2101 WEBSTER ST STE 1300 OAKLAND, CA 94612 <a href="mailto:gloria.smith@sierraclub.org">gloria.smith@sierraclub.org</a>
JULIAN ARIS SIERRA CLUB ENVIRONMENTAL LAW PROGRAM 2101 WEBSTER STREET STE 1300 OAKLAND CA 94612 <a href="mailto:julian.aris@sierraclub.org">julian.aris@sierraclub.org</a>	
<b>STAFF</b>	
JOHANNA RIEMENSCHNEIDER (C) (HC) PUC STAFF - DEPARTMENT OF JUSTICE 1162 COURT ST NE SALEM, OR 97301-4796 <a href="mailto:johanna.riemenschneider@doj.state.or.us">johanna.riemenschneider@doj.state.or.us</a>	ROSE ANDERSON (C) (HC) PUBLIC UTILITY COMMISSION OF OREGON PO BOX 1088 SALEM, OR 97308 <a href="mailto:rose.anderson@state.or.us">rose.anderson@state.or.us</a>
<b>STOP B2H</b>	
NORM CIMON 2108 FIRST ST LA GRANDE, OR 97850 <a href="mailto:ncimon@oregontrail.net">ncimon@oregontrail.net</a>	F. STEVEN KNUDSEN FSK ENERGY 2015 SE SALMON ST PORTLAND, OR 97214 <a href="mailto:sknudsen@threeboys.com">sknudsen@threeboys.com</a>
JIM KREIDER 60366 MARVIN RD LA GRANDE, OR 97850 <a href="mailto:jkreider@campblackdog.org">jkreider@campblackdog.org</a>	

<b>SWAN LAKE NORTH HYDRO LLC</b>	
NATHAN SANDVIG SWAN LAKE NORTH HYDRO LLC 404 WYMAN STREET WALTHAM, MA 02451 <a href="mailto:nathan.sandvig@nationalgrid.com">nathan.sandvig@nationalgrid.com</a>	ERIK STEIMLE SWAN LAKE NORTH HYDRO LLC 220 NW 8TH AVE PORTLAND, OR 97209 <a href="mailto:erik@ryedevelopment.com">erik@ryedevelopment.com</a>

Dated this 24<sup>th</sup> day of February, 2020.

  
\_\_\_\_\_  
Jennifer Argell  
Regulatory Project Manager

## CERTIFICATE OF SERVICE

I certify that I delivered a true and correct copy of PacifiCorp's **Application to Open Independent Evaluator Selection Docket** on the parties listed below via electronic mail and/or overnight delivery in compliance with OAR 860-001-0180.

### Service List UE 374

<b>AWEC</b>	
BRENT COLEMAN DAVISON VAN CLEVE, PC 1750 SW HARBOR WAY STE 450 PORTLAND, OR 97201 <a href="mailto:blc@dvclaw.com">blc@dvclaw.com</a>	TYLER C PEPPLER DAVISON VAN CLEVE, PC 1750 SW HARBOR WAY STE 450 PORTLAND, OR 97201 <a href="mailto:tcp@dvclaw.com">tcp@dvclaw.com</a>
BRADLEY MULLINS MOUNTAIN WEST ANALYTICS 1750 SW HARBOR WAY STE 450 PORTLAND, OR 97201 <a href="mailto:brmullins@mwanalytics.com">brmullins@mwanalytics.com</a>	
<b>OREGON CITIZENS' UTILITY BOARD</b>	
OREGON CITIZENS' UTILITY BOARD 610 SW BROADWAY, STE 400 PORTLAND, OR 97205 <a href="mailto:dockets@oregoncub.org">dockets@oregoncub.org</a>	MICHAEL GOETZ (C) OREGON CITIZENS' UTILITY BOARD 610 SW BROADWAY STE 400 PORTLAND, OR 97205 <a href="mailto:mike@oregoncub.org">mike@oregoncub.org</a>
ROBERT JENKS (C) OREGON CITIZENS' UTILITY BOARD 610 SW BROADWAY, STE 400 PORTLAND, OR 97205 <a href="mailto:bob@oregoncub.org">bob@oregoncub.org</a>	
<b>SMALL BUSINESS UTILITY ADVOCATES</b>	
JAMES BIRKELUND SMALL BUSINESS UTILITY ADVOCATES 548 MARKET ST STE 11200 SAN FRANCISCO, CA 94104 <a href="mailto:james@utilityadvocates.org">james@utilityadvocates.org</a>	DIANE HENKELS SMALL BUSINESS UTILITY ADVOCATES 621 SW MORRISON ST. STE 1025 PORTLAND, OR 97205 <a href="mailto:diane@utilityadvocates.org">diane@utilityadvocates.org</a>
WILLIAM STEELE BILL STEELE AND ASSOCIATES, LLC PO BOX 631151 HIGHLANDS RANCH, CO 80164 <a href="mailto:wa.steele@hotmail.com">wa.steele@hotmail.com</a>	



<b>PACIFICORP</b>	
PACIFICORP, DBA PACIFIC POWER 825 NE MULTNOMAH ST, STE 2000 PORTLAND, OR 97232 <a href="mailto:oregondockets@pacificorp.com">oregondockets@pacificorp.com</a>	MATTHEW MCVEE PACIFICORP 825 NE MULTNOMAH ST., STE 2000 PORTLAND, OR 97232 <a href="mailto:matthew.mcvee@pacificorp.com">matthew.mcvee@pacificorp.com</a>
ETTA LOCKEY PACIFICORP 825 NE MULTNOMAH ST., STE 2000 PORTLAND, OR 97232 <a href="mailto:etta.lockey@pacificorp.com">etta.lockey@pacificorp.com</a>	
<b>STAFF</b>	
MARIANNE GARDNER (C) PUBLIC UTILITY COMMISSION OF OREGON PO BOX 1088 SALEM, OR 97308-1088 <a href="mailto:marianne.gardner@state.or.us">marianne.gardner@state.or.us</a>	SOMMER MOSER (C) PUC STAFF - DEPARTMENT OF JUSTICE 1162 COURT ST NE SALEM, OR 97301 <a href="mailto:sommer.moser@doj.state.or.us">sommer.moser@doj.state.or.us</a>
ELIZABETH B UZELAC (C) PUC STAFF - DEPARTMENT OF JUSTICE BUSINESS ACTIVITIES SECTION 1162 COURT ST NE SALEM, OR 97301-4096 <a href="mailto:elizabeth.b.uzelac@state.or.us">elizabeth.b.uzelac@state.or.us</a>	

Dated this 24<sup>th</sup> day of February, 2020.

  
 \_\_\_\_\_  
 Jennifer Angell  
 Regulatory Project Manager

## CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of PacifiCorp's **Application to Open Independent Evaluator Selection Docket** on the parties listed below via electronic mail and/or overnight delivery in compliance with OAR 860-001-0180.

### Service List UM 1845

<b>CAITHNESS BEAVER CREEK, LLC</b>	
DEREK D GREEN DAVIS WRIGHT TREMAINE LLP 1300 SW FIFTH AVE STE 2400 PORTLAND OR 97201 <a href="mailto:derekgreen@dwt.com">derekgreen@dwt.com</a>	DERREL GRANT CAITHNESS BEAVER CREEK, LLC 565 5TH AVE 29TH FL NEW YORK NY 10017 <a href="mailto:dgrant@caithnessenergy.com">dgrant@caithnessenergy.com</a>
GAIL CONBOY CAITHNESS BEAVER CREEK, LLC 565 5TH AVE 29TH FL NEW YORK NY 10017 <a href="mailto:gconboy@caithnessenergy.com">gconboy@caithnessenergy.com</a>	
<b>AVANGRID RENEWABLES</b>	
KEVIN LYNCH ADVANGRID RENEWABLES, LLC 1125 NW COUCH ST STE 700 PORTLAND OR 97209 <a href="mailto:kevin.lynch@avangrid.com">kevin.lynch@avangrid.com</a>	TOAN NGUYEN AVANGRID RENEWABLES, LLC 1125 NW COUCH STE 700 PORTLAND OR 97209 <a href="mailto:toan.nguyen@iberdrolaren.com">toan.nguyen@iberdrolaren.com</a>
<b>AWEC UM 1845</b>	
TYLER C PEPPLE (C) (HC) DAVISON VAN CLEVE 333 SW TAYLOR ST., SUITE 400 PORTLAND OR 97204 <a href="mailto:tcp@dvclaw.com">tcp@dvclaw.com</a>	BRADLEY MULLINS (C) (HC) MOUNTAIN WEST ANALYTICS 1750 SW HARBOR WAY STE 450 PORTLAND OR 97201 <a href="mailto:brmullins@mwanalytics.com">brmullins@mwanalytics.com</a>
<b>NIPPC UM 1845</b>	
GREGORY M. ADAMS (C) (HC) RICHARDSON ADAMS, PLLC PO BOX 7218 BOISE ID 83702 <a href="mailto:greg@richardsonadams.com">greg@richardsonadams.com</a>	IRION A SANGER (C) (HC) SANGER LAW PC 1041 SE 58TH PLACE PORTLAND OR 97215 <a href="mailto:irion@sanger-law.com">irion@sanger-law.com</a>
<b>PACIFICORP UM 1845</b>	
PACIFICORP, DBA PACIFIC POWER 825 NE MULTNOMAH ST, STE 2000 PORTLAND OR 97232 <a href="mailto:oregondockets@pacificorp.com">oregondockets@pacificorp.com</a>	MATTHEW MCVEE PACIFICORP 825 NE MULTNOMAH PORTLAND OR 97232 <a href="mailto:matthew.mcvee@pacificorp.com">matthew.mcvee@pacificorp.com</a>

<b>OREGON CITIZENS UTILITY BOARD</b>	
<p>OREGON CITIZENS' UTILITY BOARD 610 SW BROADWAY, STE 400 PORTLAND OR 97205 <a href="mailto:dockets@oregoncub.org">dockets@oregoncub.org</a></p>	<p>MICHAEL GOETZ (C) (HC) OREGON CITIZENS' UTILITY BOARD 610 SW BROADWAY STE 400 PORTLAND OR 97205 <a href="mailto:mike@oregoncub.org">mike@oregoncub.org</a></p>
<p>ROBERT JENKS (C) (HC) OREGON CITIZENS' UTILITY BOARD 610 SW BROADWAY, STE 400 PORTLAND OR 97205 <a href="mailto:bob@oregoncub.org">bob@oregoncub.org</a></p>	
<b>RENEWABLE NW UM 1845</b>	
<p>MICHAEL O'BRIEN RENEWABLE NORTHWEST 421 SW 6TH AVENUE #975 PORTLAND OR 97204 <a href="mailto:michael@renewablenw.org">michael@renewablenw.org</a></p>	<p>SILVIA TANNER RENEWABLE NORTHWEST 421 SW 6TH AVE, STE 975 PORTLAND OR 97204 <a href="mailto:silvia@renewablenw.org">silvia@renewablenw.org</a></p>
<p>RENEWABLE NORTHWEST 421 SW 6TH AVE., STE. 975 PORTLAND OR 97204 <a href="mailto:dockets@renewablenw.org">dockets@renewablenw.org</a></p>	
<b>STAFF UM 1845</b>	
<p>JOHANNA RIEMENSCHNEIDER (C) (HC) PUC STAFF - DEPARTMENT OF JUSTICE BUSINESS ACTIVITIES SECTION 1162 COURT ST NE SALEM OR 97301-4796 <a href="mailto:johanna.riemenschneider@doj.state.or.us">johanna.riemenschneider@doj.state.or.us</a></p>	<p>JP BATMALE (C) (HC) PUBLIC UTILITY COMMISSION OF OREGON 201 HIGH ST SE SALEM OR 97301 <a href="mailto:jp.batmale@state.or.us">jp.batmale@state.or.us</a></p>

Dated this 24<sup>th</sup> day of February, 2020.

  
 Jennifer Angell  
 Regulatory Project Manager

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

UM \_\_\_\_\_

In the Matter of

PACIFICORP d/b/a PACIFIC POWER

Application for Approval of 2020 All-Source  
Request for Proposals.

**APPLICATION TO OPEN  
INDEPENDENT EVALUATOR  
SELECTION DOCKET**

**I. INTRODUCTION**

In accordance with the competitive bidding rules adopted by the Oregon Public Utility Commission (Commission),<sup>1</sup> PacifiCorp d/b/a Pacific Power (PacifiCorp or the Company) requests an order: (1) opening a docket for approval of PacifiCorp’s 2020 All-Source (AS) Request for Proposals (RFP), which is a solicitation process for the acquisition of up to 4,400 megawatts (MW) of new generating resources and 600 MW of energy storage resources targeting a commercial operation date on or before December 31, 2024; and (2) appointing an independent evaluator (IE) to oversee the RFP process. The size of the resource procurement proposed for the 2020AS RFP triggers the Commission’s competitive bidding rules adopted by Commission Order 18-324 (the Rules) and necessitates engagement of an IE.<sup>2</sup>

The IE RFP is attached to this Application and details the IE’s duties regarding preparation of the 2020AS RFP, review of bids received in response to the 2020AS RFP, and participation in this Commission proceeding. The IE RFP also provides a proposed schedule for

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<sup>1</sup> *In the Matter of the Rulemaking Regarding Allowances for Diverse Ownership of Renewable Energy Resources*, Docket No. AR 600, Order No. 18-324, Appendix A (Aug. 30, 2018).

<sup>2</sup> OAR 860-089-0100(1)(a); *see also* OAR 860-089-0200(1) (requiring an electric utility to engage an IE prior to issuing an RFP).

the 2020AS RFP as Attachment A. The proposed schedule is condensed and rigorous in order to accommodate the significant reduction in the federal investment tax credit (ITC) at the end of 2023 and the expiration of federal production tax credits (PTCs) at the end of 2024. In order for our customers to have the opportunity to take advantage of these tax incentives, the Company's proposed schedule has been designed to allow Commission selection of an IE at a public meeting on April 7, 2020. To further advance the aggressive timeline for the 2020AS RFP without impacting stakeholder input or transparency, the IE RFP includes as Attachment C the proposed methodology and scoring for the 2020AS RFP. As detailed below, these components of the 2020AS RFP require separate consideration and Commission approval in this proceeding pursuant to the Rules.

PacifiCorp filed its 2019 integrated resource plan (IRP) with the Commission on October 18, 2019, in docket LC 70. Commission action on the 2019 IRP is currently scheduled for a public meeting on May 5, 2020.<sup>3</sup> PacifiCorp proposes to commence the 2020AS RFP development concurrently with the Commission's review of the 2019 IRP. However, the proposed timeline for development of the 2020AS RFP would not result in issuance to market of the 2020AS RFP until after the Commission's order on the 2019 IRP. As set forth in Attachment A of the IE RFP, the 2020AS RFP would be issued on or about June 29, 2020 (approximately seven weeks following the Commission's order in the 2019 IRP docket). Allowing the RFP process to commence before an order on the 2019 IRP is critical to delivering the customer benefits associated with the time-limited tax benefits available for renewable resources. It would not be feasible to begin the RFP development process in May 2020 and still achieve the

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<sup>3</sup> *In the Matter of PacifiCorp's 2019 Integrated Resource Plan*, Docket No. LC 70, Scheduling Conference Memorandum (October 30, 2019). The Scheduling Conference Memorandum sets May 7, 2020, as an alternative date for Commission action at a special public meeting. This schedule is consistent with OAR 860-027-0400(10)(b), which sets a six-month review period for the IRP.

milestones that are necessary to allow selected projects to begin commercial operation by December 31, 2023 (for solar projects) and by December 31, 2024 (for wind projects) in order to take advantage of applicable federal tax credits. As outlined below, PacifiCorp believes that its proposed timeline and process is consistent with the requirements of the Commission’s competitive bidding rules and with the objective to provide a least-cost, least-risk portfolio of resources to its customers.

PacifiCorp respectfully requests that all communications related to this filing be addressed to:

Oregon Dockets PacifiCorp  
825 NE Multnomah Street, Suite 2000  
Portland, OR 97232  
[oregondockets@pacificorp.com](mailto:oregondockets@pacificorp.com)

Jessica Buno Ralston  
Attorney  
825 NE Multnomah Street, Suite 2000  
Portland, OR 97232  
[jessica.ralston@pacificorp.com](mailto:jessica.ralston@pacificorp.com)

Additionally, PacifiCorp requests that all data requests regarding this matter be addressed to:

By email (preferred): [datarequest@pacificorp.com](mailto:datarequest@pacificorp.com)

By regular mail: Data Request Response Center  
PacifiCorp 825 NE Multnomah Street, Suite 2000  
Portland, OR 97232

Please direct informal correspondence and questions regarding this filing to Cathie Allen, Manager, Regulatory Affairs, at (503) 813-5934.

## II. BACKGROUND

### A. The 2020AS RFP is aligned with the Resource Opportunities Identified in PacifiCorp’s 2019 IRP.

The action plan in the 2019 IRP advances PacifiCorp’s vision for a future where energy is delivered that is affordable, reliable, and without greenhouse gas emissions. PacifiCorp’s 2019 IRP preferred portfolio included new solar and wind resources, and for the first time,

significant battery storage resources. The preferred portfolio seeks to procure and have in-service up to 2,400 MW of new solar resources, 2,000 MW of new wind resources, and 600 MW of battery energy storage by the end of 2024 in order to address the accelerated coal retirements identified in the 2019 IRP and to take advantage of the benefits associated with lower cost renewables. To facilitate the delivery of these resources to the system, the 2019 IRP preferred portfolio also includes a 400-mile transmission line known as Gateway South that is also planned to come online by the end of 2023.

PacifiCorp’s 2019 IRP ensures that the Company will comply with the Commission’s requirements to provide adequate and reliable electricity supply at a reasonable cost and in a manner “consistent with the long-run public interest.”<sup>4</sup> The 2019 IRP identifies the preferred portfolio as the least-cost, least-risk portfolio that can be delivered through specific action items at a reasonable cost and with manageable risks, while ensuring compliance with state and federal regulatory obligations. Using a range of cost and risk metrics to evaluate numerous resource portfolios in the 2019 IRP, PacifiCorp selected a preferred portfolio that reflects a cost-conscious plan that continues the transition to a cleaner energy future with near-term investments in new renewable resources and new transmission infrastructure. By moving forward with the 2020AS RFP, the Company will be able to solicit resources that are able to take advantage of the ITCs and PTCs before these benefits are scheduled to expire or, in the case of the ITC, significantly step-down. The renewable resources are expected to allow the Company to forgo higher priced front-office transactions; this more stable resource portfolio provides benefits to customers on reliability and cost.

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<sup>4</sup> *In the Matter of Public Utility Commission Of Oregon Investigation Into Integrated Resource Planning*, Docket No. UM 1056, Order No. 07-002 at 7 (Jan. 8, 2007).

The proposed timeline (*i.e.*, seeking to have the initial short list completed by mid-October 2020) will also allow the Company to acquire the most cost effective resources available because this timeline accommodates both ITCs and PTCs. By accommodating the two sunset periods the Company will have the benefit of evaluating different resources in the same RFP to select the most competitive projects. While the extension of PTCs through December 31, 2024, allows additional time to complete wind resource development, it is important to conduct the 2020AS RFP ahead of the December 31, 2023 reduction in the ITC (from 30 percent to 10 percent) in order to allow solar projects to submit competitive bids. Without accommodation of the differing sunset periods for ITCs and PTCs, the Company may not acquire the most diverse and reliable portfolio to serve customers.

**B. PacifiCorp’s proposed 2020AS RFP Timeline allows incorporation of its Transmission Queue Reform Proposal and the Commission’s Consideration of the 2019 IRP.**

The Commission’s Rules provide two compliance tracks and PacifiCorp will comply with “track two.”<sup>5</sup> Track two of the Rules (OAR 860-089-250(2)(b)) contemplates approval of the draft request for proposals outside of a utility’s IRP proceeding. PacifiCorp did not include a draft RFP with its 2019 IRP filing in order to allow more time for consideration of how its transmission interconnection queue reform proposal might inform the RFP. PacifiCorp’s Transmission Function filed a proposal with the Federal Energy Regulatory Commission (FERC) on January 31, 2020, setting forth its proposal.<sup>6</sup> With the Company’s proposed queue reform proposal now complete and pending a decision by FERC, there is greater certainty in the potential design of the RFP. In addition, prior to the issuance of the 2020AS RFP to market the

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<sup>5</sup> OAR 860-089-0250(2).

<sup>6</sup> FERC Docket ER20-924.



Commission is expected to issue a decision on the 2019 IRP and the Company anticipates FERC’s approval of its interconnection queue reform proposal. This timing will allow for any necessary modifications to the 2020AS RFP, based on feedback from stakeholders or any rejection or modification of PacifiCorp’s interconnection queue reform proposal, while still providing adequate time to take advantage of the ITCs that will sunset in 2023 and the PTCs that will sunset in 2024.<sup>7</sup>

Where a utility requests approval of an RFP under “track two” of the Rules, it must specifically seek approval of the scoring and modeling proposed for its RFP through the IE selection docket. This application therefore requests that the Commission open the IE selection docket and consider the proposed RFP scoring and modeling provided as Attachment C of the IE RFP. The Company has included the initial draft of the RFP scoring components as Attachment C to the IE RFP that accompanies this filing in order to solicit feedback from bidders to the IE RFP; the IE bidders will weigh in on these components while stakeholders are simultaneously able to review and provide comments. The timeline for the 2020AS RFP further anticipates a meeting with stakeholders to review these components of the RFP and a Commission determination on these components at the public meeting where an IE is selected. This timing will ensure review of the scoring components while also allowing the RFP development process to move forward.

The Company notes that the proposed scoring and modeling for the 2020AS RFP is consistent with the scoring and modeling used by PacifiCorp to evaluate bids received in response to previous RFPs with accommodations assuming PacifiCorp’s interconnection queue

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<sup>7</sup> OAR § 860-089-250(3)(g).

reform proposal is timely approved by FERC<sup>8</sup> in addition to new rules address non-price scoring metrics. By proposing a scoring and modeling methodology that stakeholders are familiar with and that is detailed and objective, PacifiCorp has attempted to streamline review of the draft RFP components in order to facilitate the timeline it is requesting.

The timeline included as Attachment A of the IE RFP sets forth the critical milestones for the RFP process that will occur after the IE is selected. In addition to these dates, the Company anticipates the following “events” to occur as part of this process:

- Oregon workshop with stakeholder to review proposed RFP scoring methodology on March 12, 2020;
- Oregon workshop with stakeholders to review IE bidders on March 16, 2020; and
- Oregon Commission selection of IE and approval of RFP scoring methodology on April 7, 2020.

Only after the IE has been selected (and engaged by PacifiCorp) and the proposed RFP scoring and modeling has been approved will the Company engage with the IE and stakeholders to develop the complete RFP draft that will submitted to the Commission for approval.

**C. The 2020AS RFP will ensure a Fair Bidding Process.**

The 2020AS RFP will specifically target resource procurement consistent with the 2019 IRP analysis; accordingly, the RFP will seek proposals for up to approximately 4,400 MW of competitively priced resources that are capable of interconnecting with or delivering to PacifiCorp’s transmission system. Bids must demonstrate that the proposed projects can achieve

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<sup>8</sup> As discussed below, the scoring and modeling proposal contemplates timely FERC approval of PacifiCorp’s interconnection queue reform proposal. This component is new to the Company’s RFP process but can be further explored during the development of the complete RFP together with the IE. FERC’s decision regarding queue reform is expected during the course of this proceeding. If FERC rejects (or fails to timely approve) PacifiCorp’s proposed interconnection queue reforms, PacifiCorp will revise the RFP to reflect traditional bidding processes and evaluation criteria for projects proceeding through the existing serial queue interconnection process.

commercial operation no later than December 31, 2024. Bidders are encouraged to offer proposals under either of two (2) different structures: (1) power purchase agreements with exclusive ownership by PacifiCorp of any and all capacity and renewable attributes; or (2) “build-transfer” transactions whereby the bidder develops the project, assumes responsibility for construction, but ultimately transfers the asset to PacifiCorp pursuant to a build-transfer agreement.

As required by the Commission’s competitive bidding rules and to ensure a transparent and fair process, the 2019AS RFP will be conducted under the oversight of an IE approved by the Commission.<sup>9</sup> In addition, an IE approved by the Utah Public Service Commission (UPSC) will also oversee the RFP to ensure the process is consistent with Utah’s administrative rules<sup>10</sup> as well as being transparent and fair to all involved.

PacifiCorp will file the draft 2020AS RFP on or about April 1, 2020, after the IE has been selected and can provide comments on a draft version of the 2020AS RFP. PacifiCorp will also be filing for review and approval of the 2020AS RFP with the UPSC. Consistent with Utah law,<sup>11</sup> the 2020AS draft RFP will be filed in Utah on April 1, 2020, and will be available for comments by parties and Utah’s selected IE through June 8, 2020. This parallel review process allows all parties, as well as both IEs, to participate in development of the 2020AS RFP.

Because of the time-limited nature of this resource opportunity, PacifiCorp proposes the following schedule for this docket:

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<sup>9</sup> OAR 860-089-0200.

<sup>10</sup> Utah Code Ann. §54-17-203.

<sup>11</sup> Part 2 of the Energy Resource Procurement Act, Utah Code Ann. Title 54, Chapter 17, as required by Utah Code Ann. §54-17-202 and Commission Rules R746-420.

<b>EVENT</b>	<b>TARGET DATE</b>
Receive IE Bids	March 9, 2020
IE Approval at Open Public Meeting	April 7, 2020
File Draft RFP with Oregon Commission	April 24, 2020
IE Files Report on Draft RFP	April 27, 2020
Party Comments on Draft RFP	May 11, 2020
PacifiCorp Reply Comments	May 18, 2020
Final RFP Approval at Open Public Meeting	June 23, 2020
RFP Issued to Market	June 29, 2020
RFP Bids Due	July 29, 2020
RFP Final Shortlist Filed with the Commission	June 10, 2021
IE Closing Report on RFP	June 17, 2021
Party Comments on IE Closing Report	July 6, 2021
Final Shortlist Acknowledgement	September 9, 2021
Execute Agreements	November 8, 2021

PacifiCorp also plans to simultaneously seek a certificate of public convenience and necessity with respect to the transmission resources that are expected to be required to facilitate these resource acquisitions from the Wyoming Public Service Commission. PacifiCorp will file the 2020AS RFP with the UPSC as required by Utah law, and will provide the Washington Utilities and Transportation Commission information on an informal basis.

### **III. 2020AS RFP DEVELOPMENT PROCESS COMPLIANCE WITH COMPETITIVE BIDDING RULES**

#### **A. Review of Rules**

Below is a summary indicating how the 2020AS RFP will comply with the Commission’s Rules.

The Commission’s Rules provide two tracks for approval of the design of an RFP in OAR 860-089-0250. “Track one” contemplates inclusion of a draft RFP as part of a utility’s IRP filing with the Commission; under “track one” the Commission would acknowledge a resource need as part of the utility’s IRP and simultaneously approve the associated RFP design, scoring

methodology, and associated modeling process. “Track two” allows a utility to pursue an RFP outside of the IRP process by seeking approval of the RFP scoring and associated modeling through the IE docket. This RFP scoring and modeling is then incorporated into the complete RFP that is drafted with input from the IE and stakeholders.

PacifiCorp determined that it was necessary to issue an RFP prior to the time when an IRP acknowledgement could be received from the Commission. As described above, the Company’s 2020AS RFP seeks to take advantage of expiring tax benefits that are unlikely to be accessible if the 2020AS RFP process is not commenced until the 2019 IRP is acted on by the Commission. In addition, by waiting to develop the draft RFP until a decision is made on PacifiCorp’s interconnection queue reform proposal, PacifiCorp is able to issue an RFP that takes into account the Company’s proposed interconnection queue reforms. For these reasons, PacifiCorp elected to pursue a “track two” RFP process. The details of how PacifiCorp will comply with the Rules through “track two” are set forth below.

***1. Engagment of an IE***

This Applicaton is submitted to the Commission to open a docket for selection of an IE as required by OAR 860-089-0200(1). The Company has notified all parties to its most recent general rate case, RFP and IRP dockets of its need for an IE as required by the competitive bidding guidelines.<sup>12</sup> The timeline for the 2020AS RFP allows opportunities for stakeholder comment on the proposed RFP scoring and modeling and IE selection process at the workshops tentatively scheduled for March 12 and March 16, 2020. After consideration of this input and pursuant to the Commission’s selection of an IE, the Company will engage an IE for oversight of the 2020AS RFP. The Company’s proposed schedule also anticipates a Commission

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<sup>12</sup> OAR 860-089-0200(1). The Company provided this notice by serving the respective service lists for the following dockets: LC 70, UM 1845, and UE 374.

determination regarding the proposed RFP scoring and modeling at the time an IE is selected; this will allow the IE and PacifiCorp to begin drafting the complete draft RFP as soon as an IE is selected.

## **2. *Design of the RFP***

Pursuant to OAR 860-089-0250, where the RFP design, scoring methodology, and associated modeling process are not included in a Commission-acknowledged IRP, a proposal for scoring and associated modeling must be developed and filed for approval in the IE selection docket. PacifiCorp has included its proposal for scoring and the associated modeling as Attachment C of its IE RFP filed together with this Application.

The Company anticipates that parties to this IE selection proceeding will provide feedback on Attachment C; PacifiCorp has also requested that responses to the IE RFP include comments regarding the RFP scoring and modeling proposal set forth in Attachment C. This will allow for input from potential IEs (and the IE that it ultimately selected) on this component of the RFP without adding additional time to the RFP process.

The proposed timeline for the IE RFP includes approval of the proposed RFP scoring and modeling as a separate item from approval of the complete, draft RFP.<sup>13</sup> PacifiCorp has anticipated that approval of the RFP scoring and modeling will occur at the same time that the IE is selected. Following approval of the RFP scoring and modeling (and selection of the IE), the Company will prepare a draft of the complete RFP for review and approval with the Commission.<sup>14</sup> As detailed in the IE RFP, PacifiCorp will consult with the IE to prepare the complete draft RFP. The Company's proposed timeline also includes a bidder and stakeholder

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<sup>13</sup> See IE RFP, Attachment A.

<sup>14</sup> OAR 860-089-0250(1).

workshop tentatively scheduled for April 14, 2020, to allow additional input on the complete version of the draft RFP.

Finally, there is a comment period included in the timeline for the RFP that would allow stakeholder comments on the complete version of the draft RFP. The stakeholder workshop and comment period will ensure that adequate review of the draft RFP occurs to determine that it contains all of the necessary components identified in OAR 860-089-0250 (*e.g.*, bidder requirements for credit and capability; standard form contracts and term sheets; bid evaluation and scoring criteria, etc.).

### **3. IE Duties**

The Commission's Rules state that the IE selected will oversee the competitive bidding process to ensure that it is conducted fairly, transparently, and properly.<sup>15</sup> Section II of the IE RFP filed together with this application sets forth the duties of the IE including the following:<sup>16</sup>

- a.** Consultation with PacifiCorp on preparation of the draft RFP;<sup>17</sup>
- b.** Submission of the IE's assessment of the draft RFP to the Commission when the final draft RFP is filed for approval;<sup>18</sup>
- c.** Review the Company's scoring of bids received and selection of the initial and final shortlists to ensure that PacifiCorp has acted reasonably including independently scoring all bids and providing the IE's scores to the Commission;<sup>19</sup>

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<sup>15</sup> OAR 860-089-450(1).

<sup>16</sup> Each of these duties is listed in OAR 860-089-450. The IE RFP does not specifically address the IE duties listed as OAR 860-089-0450(5), (6), and (7) because PacifiCorp is not submitting any self-build proposals or allowing bids from its affiliates. *See* IE RFP at 3.

<sup>17</sup> IE RFP, Section II.A.1(a).

<sup>18</sup> IE RFP, Section II.A.1(b).

<sup>19</sup> IE RFP, Section II.A.2(b).

- d. Review PacifiCorp’s sensitivity analysis of the bid rankings and file a written assessment with the Commission prior to the Company’s request for acknowledgement of the final short list;<sup>20</sup>
- e. Participate in the final short list acknowledgment proceeding as directed by the Commission.<sup>21</sup>

**4. Bid Scoring and Evaluation**

As required by the Rules, the complete draft of the 2020AS RFP will be submitted for Commission approval. At that time, stakeholders and the Commission will be able to review the draft RFP for consistency with the Rule requirements set forth in section OAR 860-089-0400. Attachment C of the IE RFP, the proposed scoring and modeling methodology for the 2020AS RFP, has already incorporated these requirements in the following ways:

- The majority of scores awarded to bids received in response to the 2020AS RFP will be based on price factors (75 percent attributed to price factors);<sup>22</sup> and
- Non-price factors are based on conformance to pro forma agreements and RFP requirements and project readiness.<sup>23</sup>

PacifiCorp’s pending transmission interconnection queue proposal anticipates that a cluster study will be conducted beginning in October 2020 to identify the cost and timing of study participant’s interconnection and network upgrades required for interconnection. This cluster study that will include bidders selected for the initial shortlist is dependent on the

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<sup>20</sup> IE RFP, Section II.A.2(c).

<sup>21</sup> IE RFP, Section II.A.2

<sup>22</sup> OAR 860-089-0400(2).

<sup>23</sup> See OAR 860-089-0400(2)(b) (non-price criteria should be tied to resource characteristics identified in the IRP or conformance to standard contract forms; these non-price criteria relate to the timing need for new resources identified in the 2019 IRP and conformance with standard contract forms).

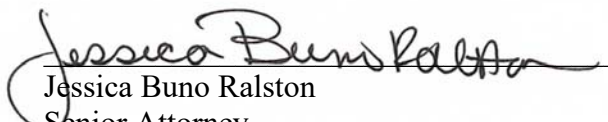


outcome of the queue reform proposal; for this reason it will be possible to fully consider this aspect of the RFP scoring and modeling proposal as the complete draft RFP is considered after selection of the IE.<sup>24</sup>

#### IV. CONCLUSION

PacifiCorp requests that the Commission open a docket for approval of a solicitation process for approximately 4,400 MW of new generating resources plus an additional 600 MW of energy storage and that the Commission appoint an IE to oversee the RFP process. The procurement of the proposed resources will provide substantial customer benefits, are an integral component of PacifiCorp's long-term plans to provide stable, reliable electric service at just and reasonable rates, and serve the public interest. As detailed above, the attached IE RFP conforms to the requirements for engagement of an IE and such IE's duties as set forth in the Commission's competitive bidding rules.

Respectfully submitted this 24<sup>th</sup> day of February, 2020.

  
Jessica Buno Ralston  
Senior Attorney  
Pacific Power d/b/a PacifiCorp

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<sup>24</sup> The proposed timeline set forth in Attachment A of the IE RFP anticipates commencement of contract negotiations with bidders while this cluster study is performed but prior to submission of the final shortlist to the Commission. This timing is being considered in order to accommodate the rigorous timeline described above and to avoid losing momentum during the anticipated cluster study process (assuming FERC timely approves the Company's proposed interconnection queue reforms). The Company will continue to evaluate the necessity of this timing during the development of the RFP, together with the selected IE, and submit a waiver request to the Commission from OAR 860-089-500(2), as necessary.

**Request for Proposals (RFP)**

**Independent Evaluator (IE)**

**For**

**PacifiCorp's**

**2020 All-Source Request for Proposals**

Issued: **February 24, 2020 Monday**  
Proposals Due: **March 9, 2020 Monday**  
5:00 PM Pacific Prevailing Time

Issuing Entity: PacifiCorp

PacifiCorp  
Attn: Resource & Commercial Strategy  
825 NE Multnomah, Suite 600  
Portland OR 97232

Email: [rfp\\_IE@pacificorp.com](mailto:rfp_IE@pacificorp.com)

# TABLE OF CONTENTS

<b>I.</b>	<b>INTRODUCTION AND BACKGROUND</b> .....	4
A.	Purpose.....	5
B.	Background.....	6
C.	Contract Term and Amendments.....	6
D.	Estimated Schedule of IE RFP Events.....	6
E.	Reservation of Rights.....	6
F.	Solicitation Addenda.....	7
G.	Proprietary Information and confidentiality.....	7
<b>II.</b>	<b>SCOPE OF WORK</b> .....	8
A.	Deliverables.....	8
1.	IE Assessment of RFP Design.....	8
2.	Reports.....	8
B.	Other Activities.....	9
<b>III.</b>	<b>MANDATORY MINIMUM QUALIFICATIONS</b> .....	12
<b>IV.</b>	<b>PROPOSAL CONTENTS</b> .....	12
A.	Qualifications.....	12
B.	Bidder Staff Organization.....	12
C.	Required Submittals.....	12
D.	Cost Proposal Requirements.....	14
<b>V.</b>	<b>PROPOSAL REQUIREMENTS AND SUBMISSION</b> .....	14
A.	Questions.....	14
B.	Submission of Bids.....	14
<b>VI.</b>	<b>SCORING CRITERIA</b> .....	15
A.	Ability of Bidder to Perform Proposed Work (300 points).....	15
B.	Ability of Bidder to Perform Proposed Work (350 points).....	15
C.	Price Proposal (300 points).....	16
D.	CONFORMITY TO PROPOSED PROFESSIONAL SERVICES CONTRACT (50 points)..	16
<b>VII.</b>	<b>PROCESS SELECTION</b> .....	16
A.	Evaluation.....	16
B.	Selection Notification.....	17
<b>VIII.</b>	<b>CONTRACT INFORMATION</b> .....	17
A.	Professional Services Contract.....	17

## **Attachments**

- A PacifiCorp's 2020AS RFP Schedule
- B Oregon Competitive Bidding Rules
- C Proposed 2020AS RFP Scoring and Modeling
  - C-1 2020AS RFP Locational Capacity Limits
  - C-2 Non-Price Scoring Matrix
- D Bidder Pricing Proposal
- E Professional Services Contract

## I. INTRODUCTION AND BACKGROUND

This Independent Evaluator (IE) Request for Proposals (RFP) is being issued to comply with Oregon competitive bidding rules as established in Order 18-324 of Docket AR-600<sup>1</sup> while PacifiCorp conducts an all-source RFP for future resources meeting specific requirements and schedule. The IE will be required to perform the activities described in detail in this IE RFP.

PacifiCorp established an action item out of PacifiCorp's 2019 Integrated Resource Plan (IRP) to conduct an all-source RFP in 2020 (2020AS RFP). This action item is driven by the 2019 IRP preferred portfolio, which includes 2,380 megawatts (MW) of new proxy solar resources co-located with 595 MW of new proxy battery energy storage system (BESS) capacity and 1,989 MW of new proxy wind resources by the end of 2023.

At the time the 2019 IRP was filed, PacifiCorp assumed new wind resources would need to achieve commercial operation by the end of 2023 to be eligible for the 40 percent production tax credit (PTC). Similarly, PacifiCorp assumed new solar resources collocated with BESS resources would need to achieve commercial operation by the end of 2023 to be eligible for the 30 percent investment tax credit (ITC). After the 2019 IRP was filed, federal legislation was passed extending the PTC to allow projects that begin construction in 2020 to receive a 60 percent PTC if placed into service by year-end 2024. Consequently, the 2020AS RFP will consider bids that can achieve commercial operation by December 31, 2024.<sup>2</sup>

In addition, PacifiCorp will accept bids from pumped storage hydro and nuclear resources requiring longer lead time to develop and construct that places the project completion beyond the required 2020AS RFP December 31, 2024 commercial operation date (COD).<sup>3</sup>

Under the 2020AS RFP, PacifiCorp is seeking proposals for competitively priced resources capable of interconnecting with or delivering to PacifiCorp's transmission system in its east or west balancing authority areas (PACE and PACW, respectively), targeting the specific topology and resource mix as shown in **Attachment C-1 – 2020AS RFP Locational Capacity Limits**.

Projects submitted into the 2020AS RFP must have a minimum net power production capacity greater than 20 MW(AC)<sup>4</sup> with the exception of qualifying facilities (QFs) under the Public Utility Regulatory Policies Act (PURPA). Per OAR 860-089-250(4), QFs are allowed to participate in the 2020AS RFP if the project's nameplate capacity is greater than the state standard avoided cost schedule threshold.

PacifiCorp is accepting qualified proposals from bidders who currently own or have legally binding rights to develop new green-field resources that are discrete generating assets, are not located behind any load served by a utility or net-metered, and can be individually metered and remotely monitored. PacifiCorp is not seeking bids from existing operating facilities.

PacifiCorp will consider proposals for the following transaction structures:

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<sup>1</sup> In the Matter of Rule Making Regarding Allowances for Diverse Ownership of Renewable Energy Resources, AR 600, Order 18-324 (August 30, 2018).

<sup>2</sup> It is recognized that the extension of production tax credits will generally only benefit wind resources and the 30 percent ITC for solar and solar co-located with BESS capacity continues to sunset at the end of 2023.

<sup>3</sup> A review of PacifiCorp Transmission's interconnection queue showed pumped storage and nuclear as the only long-lead time resources. Wind and solar or solar collocated with a BESS that have CODs beyond 2024 will not be accepted under this criteria as they have a shorter build cycle and the ability to bid into the next RFP issued by PacifiCorp.

<sup>4</sup> All project size in the 2020AS RFP will be referenced in MW AC unless specifically noted.

1. Build-transfer transaction whereby the bidder develops the project, assumes responsibility for construction and ultimately transfers the asset to PacifiCorp in accordance with the terms of a build-transfer agreement (BTA). Under this transaction structure, the bidder will be responsible for all development, design, equipment supply, construction, commissioning, and performance testing, and will be required to design and construct the resource in conformance with PacifiCorp's specifications. PacifiCorp will not accommodate build-transfer transactions that involve the ultimate transfer of a project company to PacifiCorp.<sup>5</sup>
2. Power-purchase agreement (PPA) with exclusive ownership by PacifiCorp of any and all capacity and environmental attributes associated with all energy generated with terms up to 25 years. Standalone battery storage or a BESS collocated with a renewable resource will be contracted through a separate agreement controlling the output of the battery. Collocated resource and battery storage must have agreements that are the same term length.

PacifiCorp will accept bids from the following resource and structure types. PacifiCorp will not accept bids in the 2020AS RFP from existing operating facilities.

New renewable resource under BTA or PPA.

- New renewable resource with BESS under BTA or PPA.
- New non-renewable resource under a BTA or PPA.
- New standalone storage resources under a BTA or battery storage agreement. **Note: Pumped storage hydro will be allowed as BTA or PPA.**

PacifiCorp is making specific utility property and right-of-way easements available for bidders in this RFP consistent with OAR 860-089-0300(3)(a) including compensation to PacifiCorp commensurate to market rate for the easement asset. Bidders will be required to provide supporting documentation demonstrating that its project location and design allows the project via its own gen-tie line to directly interconnect to an existing PacifiCorp substation at the designated point of interconnection held by certain specified PacifiCorp owned coal generation facilities.

PacifiCorp is not submitting any self-build ownership proposals (benchmark resources) in the 2020AS RFP and is not accepting any bids from any PacifiCorp affiliate.<sup>6</sup>

The proposed 2020AS RFP schedule is contained in **Attachment A – Proposed 2020AS RFP Schedule**.

#### A. PURPOSE

The purpose of this solicitation is to assist the Commission Staff in recommending an IE for PacifiCorp's 2020AS RFP for the Commission's consideration. PacifiCorp will contract directly with the Commission-selected IE using **Attachment E – PacifiCorp**

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<sup>5</sup> **Note** – In considering submittal of a BTA bid involving a solar resource or a solar resource collocated with a BESS, bidders will be advised in the 2020AS RFP that they should assume PacifiCorp, as a public utility owner of a solar resource or a solar resource collocated with a BESS eligible for the federal investment tax credit, will realize the investment tax credit over the useful life of the solar resource. Such utility normalization may disadvantage a BTA solar resource or a solar resource collocated with a BESS bid as compared to a PPA solar resource bid or a BTA wind resource bid.

<sup>6</sup> Unless directed by the Commission otherwise, a PacifiCorp "affiliate" shall be limited to Berkshire Hathaway Energy Company and its subsidiaries.

**Professional Services Contract.** The IE must be independent of the utility and potential bidders, and also be experienced and competent to perform all IE functions identified in Oregon’s competitive bidding rules.

**B. BACKGROUND**

The Commission issued rules on competitive bidding for resource acquisitions, where a company seeks to acquire resources or contracts with a duration greater than five years and the quantity size is greater than 80 MW.<sup>7</sup> The 2020AS RFP is subject to these rules as further described in **Attachment B – Oregon competitive bidding rules.**

Under the Commission’s competitive bidding rules, an IE must be used in each resource RFP that meets the duration and size criteria above to help ensure that all offers are treated fairly and consistently. The IE is tasked with ensuring the 2020AS RFP bid evaluation and selection process are also consistent the rules.

**C. CONTRACT TERM AND AMENDMENTS**

The IE contract is anticipated to be for an initial term of eighteen (18) months, with the option to renew on a month to month basis until the IE’s participation in the 2020AS RFP process is completed. The IE must be available according to the schedule established by the Commission.

**D. ESTIMATED SCHEDULE OF IE RFP EVENTS**

The proposed schedule for selection of the Oregon IE is shown below for the major milestones. Additional milestones in the selection process and the overall 2020AS RFP schedule are included in **Attachment A – Proposed 2020AS RFP Schedule** and should be reviewed during bid preparation.

<b>Milestone</b>	<b>Date</b>
Issue OR IE RFP to market	02/24/2020
OR IE Bids Due	03/09/2020
OR Commission Public Meeting Approving IE	04/07/2020
Execute Contract with IE	04/09/2020

**E. RESERVATION OF RIGHTS**

PacifiCorp reserves the right in its sole discretion to:

- Amend this RFP for any reason or cancel this solicitation without liability if cancellation would be in the public interest;
- Reject any or all Proposals received in response to this RFP, without liability, if such rejection would be in the public interest. PacifiCorp is not responsible for any costs incurred by the bidder in connection with submitting proposals, and all bidders who submit a proposal do so solely at their own expense;

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<sup>7</sup> OAR 860-089-100 (1)(c).

- Waive any minor irregularity, informality, or non-conformance with the provisions or procedures set forth in this RFP, and to seek clarification of each proposal if necessary;
- Contact any or all references submitted with the proposal.

#### F. SOLICITATION ADDENDA

PacifiCorp may revise this RFP on or before the RFP closing date. PacifiCorp will not waive, alter, modify, supplement or amend the terms of this RFP in any manner except by written addenda issued by PacifiCorp in the same manner as the original RFP was advertised. Any purported changes, additions, interpretations or clarifications to the RFP that are issued in any manner other than as described above will not be effective, and the bidder shall not rely upon such information.

#### G. PROPRIETARY INFORMATION AND CONFIDENTIALITY

1. All information submitted by a bidder will be considered public information unless the bidder requests that information be treated as confidential, and the information is considered exempt under ORS 192.501 or 192.502. If a bidder declares any information contained in its bid submittal to be confidential, the bidder must specifically identify those sections as containing “Confidential Information” and briefly explain how and why the information is exempt from disclosure to the public in accordance with ORS 192.501 or 192.502. Specifically, any documents submitted and any documents exchanged between the parties that contain Confidential Information shall be marked on the outside as containing Confidential Information, and each page upon which Confidential Information appears must be marked as containing Confidential Information. The Confidential Information should be clearly identifiable to the reader wherever it appears.
2. All copies submitted, as well as the original proposal, must be marked in this manner. The request must also include the name, address, and telephone number of the person authorized by the bidder to respond to any inquiries by PacifiCorp concerning the confidential status of the materials. PacifiCorp agrees to treat such information as confidential and to submit such information to the Commission, or commissions, and other parties in accordance with a protective order.
3. In addition, the bidder agrees that certain Commission-authorized entities must be allowed to review such confidential materials.
4. All information supplied to PacifiCorp or generated internally by PacifiCorp is and will remain the property of PacifiCorp. To the extent bidder receives information from PacifiCorp, bidder must maintain the confidentiality of such information and such information may not be provided to any third party before, during or after this IE RFP process unless required by law or regulatory order.
5. To the extent the Bidder selected as the IE for the 2020AS RFP receives information from PacifiCorp, the IE must maintain the confidentiality of such information and such



information may not be provided to any third party before, during or after the 2020AS RFP process unless required by law or regulatory order.

## II. SCOPE OF WORK

### A. DELIVERABLES

The 2020AS RFP is being issued to pursue a time-sensitive opportunity influenced by availability of federal tax credits for renewable resources, a potential discrete window in fourth quarter of 2020 for securing interconnection studies and agreements by 2021 (described more fully below), and construction schedules for potential new transmission infrastructure. Consequently, the scope of work has a condensed and rigorous schedule, which IE bidders should fully consider in their proposals.

#### 1. IE ASSESSMENT OF RFP DESIGN

- a. PacifiCorp will file an initial draft 2020AS RFP with the Commission after selection of the IE to allow an opportunity for the selected IE to review stakeholder comments on the draft RFP and provide feedback on the draft 2020AS RFP before the final draft RFP approval process is completed.<sup>8</sup> This process will ensure that the final draft RFP reflects any comments received by both stakeholders and the IE without delaying the timeline for selection of a final shortlist of bids.
- b. The selected IE will complete a thorough assessment of the 2020AS RFP design and submit its assessment of the final RFP draft to the Commission when PacifiCorp files its final draft RFP for approval. The assessment should review the adequacy, accuracy and completeness of all solicitation materials to ensure compliance with the Commission's competitive bidding requirements and consistency with accepted industry standards and practices.
- c. The IE will participate in joint face-to-face meetings and discussions, as needed, with Utah's selected independent evaluator regarding the overall RFP process and final comments on the 2020AS RFP to ensure the final draft RFP is consistent across PacifiCorp's states as submitted to the Oregon and Utah Commissions. PacifiCorp has proposed two specific face-to-face joint IE meetings in Portland; one to cover the overall RFP process and a second to review final draft RFP to align comments from Utah and Oregon stakeholders. Additional face-to-face meetings may be established during the RFP process.

#### 2. REPORTS

The IE will be required to file the following identified RFP reports with the Commission:

- a. Final Draft RFP Assessment: The IE will complete and file an assessment of the final RFP draft as described in A.1.a above at the time PacifiCorp files its final draft RFP for Commission approval.
- b. Bid Scoring: The IE will independently score the competing bids and file the scores with the Commission.<sup>9</sup> While PacifiCorp is not submitting a benchmark bid, this task will be completed to provide results to the Commission. This report will be provided to the Commission under seal or as highly confidential information subject to a modified protective order.

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<sup>8</sup> OAR 860-089-0250 (1).

<sup>9</sup> OAR 860-089-0450 (7).

- c. Sensitivity Analysis: IE will review PacifiCorp’s sensitivity analysis for the final shortlist as completed per OAR 860-089-0400(5)(b) and file a written assessment with the Commission.<sup>10</sup>
- d. Closing Report: The closing report will provide the IE’s detailed assessment of PacifiCorp’s selection of the final short-list of bids, including all aspects of the solicitation process and the IE’s involvement, observations, conclusions and recommendations. The reasons and basis for a) ranking market bids, b) selecting and scoring market bids, and c) rejecting market bids are to be fully detailed in the IE’s closing report.

The closing report will also include an analysis of whether or the extent to which:

- a. the resources selected minimize long-term costs for PacifiCorp’s retail customers taking into consideration overall system costs and risks,
- b. the solicitation process was fair,
- c. screening factors and weights were applied consistently and comparably to all market bids,
- d. credit and security requirements, liquidated damages provisions, resource performance and operational characteristics, warranties and other similar requirements were appropriately applied to bid evaluation and appropriately affected the outcome of the solicitation process,
- e. all reasonably available data and information necessary for a potential bidder to submit a bid was provided,
- f. the IE was provided with or given access to all data, information and models relevant to the solicitation process to permit full and timely scoring, testing and verification of assumptions, models, inputs, outputs, and results,
- g. confidentiality claims and concerns between the IE and PacifiCorp were resolved in a manner that preserved confidentiality as necessary, yet permitted dissemination and consideration of all information reasonably necessary for the bidding process to be conducted fairly and thoroughly, and
- h. the evaluation was performed consistent with Commission-approved competitive bidding rules.

The closing report will also include:

- a. The IE’s independent scoring of all or a sample of the bids to determine whether the selections for the initial and final short-lists are reasonable. The Commission may request that all bids be scored by the IE if a participant in the final shortlist acknowledgment proceeding requests the Commission to direct the IE to score all bids.<sup>11</sup>
- b. Comparison between PacifiCorp’s and the IE’s scoring and evaluation of the competing bids following a meeting(s) with PacifiCorp to attempt to reconcile and resolve any scoring differences. Include an explanation of the reconciliation process and any remaining differences. In the closing report, the IE will be required to disclose any conflict of interest regarding any of the actual RFP bidders.

## B. OTHER ACTIVITIES

- 1. Confer with Commission Staff as needed on the IE’s duties.<sup>12</sup> These discussions are anticipated to be performed in person, by phone and by e-mail.

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<sup>10</sup> OR 860-089-0450 (8).

<sup>11</sup> OAR 860-089-0450 (5).

<sup>12</sup> OAR 860-089-0450 (2).

2. In consultation with Commission Staff, participate in additional meetings with parties, hosted by Staff, related to final short-list selection or any request for acknowledgment of the final short-list.
3. Participate in the pre-bid RFP conference and be available to discuss the IE role in the 2020AS RFP process. Participate in any additional pre-bid conferences.
4. Review and comment on PacifiCorp's screening process for bidder eligibility.
5. Participate in any Commission public meeting (if any) related to the Commission's consideration of RFP approval, based on the IE's assessment of the 2020AS RFP design.
6. Monitor all aspects of the solicitation process from the RFP issuance through the final shortlist of bids, including the following:
  - a. Opening and cataloging of market bids including bid fees,
  - b. Bidder eligibility screening,
  - c. Communications between bidders and PacifiCorp before and after proposals are due,
  - d. Any requested bidder updates,
  - e. Any RFP amendments issued by PacifiCorp,
  - f. Evaluation and ranking of responses,
  - g. Selection of the initial shortlist bids,
  - h. Selection of the final shortlist of bids, and
  - i. Monitoring the solicitation process and discussions with bidders through the final shortlist determination and any acknowledgement of the final shortlist.

The IE may be requested by Commission Staff to perform additional monitoring for the period between any acknowledgement process and contract finalization. Such a request will be made by the Commission Staff to PacifiCorp directing PacifiCorp to issue a revised scope of work and request an incremental cost estimate from the IE, which, if acceptable to the Commission Staff, will result in an amended contract with the IE.

7. Audit the evaluation process and validate the evaluation criteria, methods, models, and other solicitation processes have been applied as approved by the Commission and consistently and appropriately applied to all bids. Verify assumptions, inputs, outputs and results are appropriate and reasonable.
8. Verify the basis for selection of the initial shortlist of bids.
  - a. Verify that the price score is calculated as appropriate for the product and technologies submitted in the bids, using real-levelized or annuity methods.<sup>13</sup>
  - b. Verify that the non-price score is based on resource characteristics identified in PacifiCorp's most recent acknowledged IRP Action Plan or IRP Update (e.g., resource term, type, development, operational characteristics, etc.) and materially conforming to the standard form contracts or termsheets attached to the RFP.<sup>14</sup> Verify that the non-price criteria is objective and can be reasonably self-calculated by bidders.<sup>15</sup>

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<sup>13</sup> OAR 860-089-0400 (2)(a).

<sup>14</sup> The utility must allow bidders on the final shortlist to negotiate mutually agreeable final contract terms that are different from ones in the standard form contracts.

<sup>15</sup> OAR 860-089-0400(2)(b).

9. Verify the basis for selection of the final shortlist of bids.
  - a. Verify the impact of PacifiCorp Transmission's interconnection agreements or study reports setting forth the cost and timing of each project's interconnection service on the selection of the final shortlist from the initial shortlist.
  - b. Verify the results of modeling the effect of candidate resources on overall system costs and risks.
  - c. Verify that the portfolio modeling and decision criteria used to select the final shortlist of bids are consistent with the modeling and decision criteria used to develop PacifiCorp's acknowledged IRP Action Plan.
10. Advise PacifiCorp and Commission Staff of any issue that might reasonably be construed to affect the integrity of the solicitation process and provide PacifiCorp an opportunity to remedy the defect identified. Advise Commission Staff of significant changes or unresolved issues as they arise.
11. Independently score all or a sample of the market bids to determine whether the selections for the initial and final shortlists are reasonable. Based on an initial sample of market bids, the IE should use its judgment regarding whether independent scoring of all bids is appropriate, in consultation with Commission Staff.
12. Independently evaluate the unique risks and advantages associated with a build-transfer structure as contemplated in this RFP, including the regulatory treatment of costs or benefits related to actual plant operation costs and performance differing from what was assessed in the RFP.
13. Compare the IE's and PacifiCorp's scoring and evaluation of the competing bids and attempt to reconcile and resolve any scoring differences.
14. Participate in Commission proceedings on acknowledgment of the final short-list of bids, if PacifiCorp requests such acknowledgment. Participation would include oral comments at a Commission public meeting or hearing.
15. Participate in any additional meetings with parties on request.

### III. MANDATORY MINIMUM QUALIFICATIONS

For this IE RFP, the Commission has directed that the IE must be independent of the utility and potential bidders.<sup>16</sup> The following are minimum requirements that must be demonstrated by Bidders:

1. Bidder shall be experienced and competent to perform all IE functions identified in the competitive bidding rules.
2. Bidder shall disclose all business conducted with PacifiCorp or its affiliates, past or present.
3. Bidder shall re-confirm, upon receipt of the 2020AS RFP bidder list, that the bidder has no conflict of interest with any of the bidders or their affiliates.
4. Bidder shall disclose any conflict, or potential conflict of interest, that might arise during the course of the project, including any potential bidders in PacifiCorp's 2020AS RFP.
5. Bidder shall demonstrate its experience and competence in assessment, evaluation and monitoring related to competitive bidding for electricity supplies including renewable and thermal resources.
6. Bidder shall demonstrate its experience and competence in assessment and evaluation of storage technologies including operational dispatch of batteries as part of an electric utility's resource portfolio.

### IV. PROPOSAL CONTENTS

Bidders must include the following in their proposal:

#### A. QUALIFICATIONS

The bidder shall provide all information deemed necessary to fully demonstrate the bidder's qualifications as required under Article III above.

#### B. BIDDER STAFF ORGANIZATION

Each proposal shall explain the bidder's staff organization and responsibility hierarchy of staff to be assigned to the 2020AS RFP. Please note the duration of the 2020AS RFP when developing organization and assignments. Such assignments and responsibilities shall be broken down and described by task. The bidder shall highlight illustrations of relevant prior experience on similar projects.

#### C. REQUIRED SUBMITTALS

Detailed response containing:

1. Bidders must provide a cost proposal that includes all-inclusive fixed costs for each task in the detailed scope of work by pricing area, as specified in **Attachment D – Bidder Pricing Proposal**.

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<sup>16</sup> OAR 860-089-0200.

2. A complete narrative of the bidder’s assessment of the work to be performed, the bidder’s ability and approach, and the resources necessary to fulfill the requirements of this RFP. This should demonstrate the bidder’s understanding of the IE’s performance expectations. Clearly indicate any options or alternatives proposed.
3. A specific point-by-point response by task number (e.g., “A1”), in the order listed in the detailed scope of work, to each requirement in the RFP.
4. Bidder must provide experience with production costs models and an initial assessment and critique of PacifiCorp’s scoring methods and computer models (SO and PaR) to be utilized with the 2020AS RFP as described in **Attachment C – PacifiCorp’s Proposed 2020AS RFP Scoring and Modeling** specifically on its consistency with PacifiCorp’s 2019 IRP modeling process and the Oregon rules addressing the evaluation criteria.<sup>17</sup> If selected, bidders will have further opportunity to provide additional detail under Scope of Work A.1.a Design of the RFP.
5. Qualification and expertise of staff proposed for this project.
6. Experience and competence in assessment, evaluation and monitoring related to competitive bidding for renewable and non-renewable resource supplies that may or may not include a BESS or energy storage. Bidder should document experience with assessing PPAs, BTAs, and battery storage agreements. Such experience should include evaluating power supply alternatives including production cost modeling to evaluate cost and risk.
7. Experience and competence in assessment, evaluation and monitoring related to competitive bidding for supplies within the Western Electric Coordinating Council (WECC).
8. Demonstrated knowledge of existing or anticipated renewable portfolio standards within the WECC.
9. Experience evaluating a competitive bidding process that involves examination of interconnection studies issued in accordance with Open Access Transmission Tariff (OATT) interconnection processing rules common to vertically integrated utilities that are outside organized markets, including both traditional serial queue processing and ‘first-ready first-served’ interconnection cluster study processing alternatives.<sup>18</sup>
10. Work samples demonstrating such expertise and competence, including work samples demonstrating the bidder’s willingness and ability to work independent of utilities and to rigorously review, evaluate, and critique utility RFPs for renewable or thermal energy resources including storage.
11. Performance references for similar IE projects with other utilities.
12. Use of electronic platform for management of bid submittal, communication, and documentation of evaluation.

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<sup>17</sup> OAR 860-089-0400(2).

<sup>18</sup> PacifiCorp recommends that bidders familiarize themselves with the company’s recently filed interconnection queue reform proposal filed January 31, 2020 with the Federal Energy Regulatory Commission (FERC Docket ER20-924).

13. Bidders must declare any conflicts of interest by identifying any conflict, or potential conflict of interest that might arise during the course of the project.
14. Disclose any past, current or anticipated future relationship with or work for PacifiCorp or any affiliate, and any public utility regulatory agency in any of the states served by PacifiCorp. This disclosure should specify the date, nature and scope of any such relationship or work.<sup>19</sup>

#### D. COST PROPOSAL REQUIREMENTS

The information requested in this section will be used by the Commission Staff to evaluate the reasonableness of the overall project price quotation. The bidder must estimate the major cost categories and hours associated with each task.

**As a minimum requirement, each proposal shall contain the following:**

1. Personnel costs, itemized and broken down by:
  - a. personnel category (i.e. project manager etc.),
  - b. names of personnel in each category to be used,
  - c. estimated hours for each task,
  - d. rates per hour for each person, and
  - e. subtotal for personnel cost.
2. Itemized cost of materials, supplies and copies and a subtotal for these elements.
3. Fully itemized transportation and related costs, itemized and broken down by at least:
  - a. travel,
  - b. lodging,
  - c. meals and other costs, and
  - d. subtotal for transportation and related costs.

### V. PROPOSAL REQUIREMENTS AND SUBMISSION

#### A. QUESTIONS

Interested parties and bidders may submit questions related to this solicitation, and PacifiCorp will respond in a timely fashion. All information, including pre-bid materials, questions, and PacifiCorp's response to questions, will be posted on the PacifiCorp website at [www.pacificorp.com](http://www.pacificorp.com). Any questions on the IE RFP or related documents should be sent to Company via email at **rfp\_IE@pacificorp.com**.

#### B. SUBMISSION OF BIDS

One (1) proposal with an original signature, must be received no later than **5:00 PM Pacific Prevailing Time on Monday March 9, 2020**. Proposals received after this time and date will not be accepted and returned to the bidder.

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<sup>19</sup> An oral presentation by a bidder to clarify a proposal may be required.

An additional copy must be submitted electronically to [rfp\\_IE@pacificorp.com](mailto:rfp_IE@pacificorp.com).

All submitted bids must be transmitted by express, certified or registered mail, or hand delivery to the following address:

**PACIFICORP**  
**OREGON IE RFP**  
**ATTENTION: RESOURCE & COMMERCIAL STRATEGY**  
**825 NE MULTNOMAH, SUITE 600**  
**PORTLAND, OREGON 97232**  
**Email: [rfp\\_IE@pacificorp.com](mailto:rfp_IE@pacificorp.com)**

Proposal shall be in the format outlined in this section. Proposal shall be submitted prepared on standard 8 1/2 inch by 11 inch recycled paper, duplex printed (2 sided). THE PROPOSAL MUST BE ORGANIZED AND BOUND IN THE SAME ORDER AS THE INFORMATION IS REQUESTED IN THIS RFP. PacifiCorp may reject any proposal that fails to follow these instructions

## **VI. SCORING CRITERIA**

From the information submitted in accordance with Article V, proposal contents, and client references, the evaluation committee (see Article VIII) will score proposals based upon the following:

### **A. ABILITY OF BIDDER TO PERFORM PROPOSED WORK (300 POINTS)**

Maximum of three hundred (300) points. Demonstrated training, experience and ability of the bidder and its individual staff member(s) that will be assigned to the project to perform the proposed work, including, but without limitation:

1. Understanding of the scope of work and deliverables, as shown by IE's description of the tasks in its deliverables, understanding of the functions to be performed, and experience evaluating another type of renewable resource RFP or other related experience outside the WECC. (50 points)
2. Specific experience reviewing a RFP for renewable and non-renewable resources, including experience with evaluating market bids. (100 points)
3. Experience evaluating storage options including batteries or other types. (100 points)
4. Experience evaluating another type of renewable resource RFP or other related experience in the WECC. (50 points)

### **B. ABILITY OF BIDDER TO PERFORM PROPOSED WORK (350 POINTS)**

Maximum of three hundred and fifty (350) points. Demonstrated training, experience and ability of the bidder and its individual staff member(s) that will be assigned to the project to perform the proposed work, including, but without limitation:

1. Bidder's experience with utility applications of production cost modeling specific to renewable generating resources bids as part of an RFP (100 points).



2. Bidder's experience with both OATT 'serial queue' and 'first-ready, first-served, cluster' interconnection study processing (100 points).
3. Initial assessment and critique of the scoring methods and computer models as described in **Attachment C – PacifiCorp's Proposed 2020AS RFP Scoring and Modeling** (150 points).

#### C. PRICE PROPOSAL (300 POINTS)

Maximum of three hundred (300) points. **Attachment D – Bidder Pricing Proposal** will be the basis for evaluation of Bidder's proposal on the cost of the project, the overall elements of that cost and the overall appropriateness of the cost in relation to the project as proposed.

1. The cost of the project, the overall elements of that cost. (150 points)
2. The overall appropriateness of the cost in relation to the project as proposed. (150 points)

#### D. CONFORMITY TO PROPOSED PROFESSIONAL SERVICES CONTRACT (50 POINTS)

Maximum of fifty (50) points. IE bidder to provide redline and comments to **Attachment E – Professional Services Contract**.

### VII. PROCESS SELECTION

#### A. EVALUATION

1. Initial Review: PacifiCorp and Commission Staff will review all proposals to help ensure that all prescribed provisions and procedures have been met. Proposals that do not meet all prescribed mandatory qualifications, solicitation procedures and requirements may be rejected and eliminated from the selection process. Proposals meeting the prescribed solicitation procedures and requirements will be reviewed by an evaluation committee composed of Commission Staff, PacifiCorp and interested non-bidding parties.
2. Evaluation Committee Process: Each member of the evaluation committee will independently review and score each proposal. After each member of the evaluation committee has reviewed and scored each proposal, the evaluation committee will meet to discuss their findings and develop consensus scores for each proposal based on criteria listed above.
3. Scoring: The entities or individuals submitting the highest scoring proposals shall be recommended to the Commission for its consideration.
4. Recommendation to Commission: Staff will issue a report for the Commission public meeting five (5) days prior to the public meeting, with its recommendation for an Oregon IE for PacifiCorp's 2020AS RFP.
5. Commission's ultimate discretion in selecting IE: The Commission will consider Staff's recommendation and comments from PacifiCorp and non-bidding parties in selecting the IE, but the ultimate discretion to select an IE lies with the Commission. The Commission will direct PacifiCorp to enter into a contract with the selected IE.

## B. SELECTION NOTIFICATION

PacifiCorp will notify every bidder of its selection status.

## VIII. CONTRACT INFORMATION

### A. PROFESSIONAL SERVICES CONTRACT

1. The selected bidder will be required to enter into a professional services contract with PacifiCorp based on the scope of work described herein and in a form substantially similar to the form attached to this RFP in **Attachment E – Professional Services Contract**. Commission staff will review the draft PacifiCorp contract prior to execution to ensure that it conforms to this solicitation and the Commission’s competitive bidding rules.
2. The State of Oregon will not be a party to the resulting contract, and will not be responsible for any conflicts that arise between PacifiCorp and the selected IE.

**Attachment A**

**PACIFICORP'S PROPOSED 2020AS RFP TIMELINE**

## Attachment A

### PACIFICORP'S PROPOSED 2020AS RFP TIMELINE

The table below contains PacifiCorp's proposed 2020AS RFP schedule. Dates are subject to change.

<b>Milestone</b>	<b>Type</b>	<b>Date</b>	<b>Day</b>
File notice of RFP with UT Commission - IE need	UT Docket	01/23/2020	Thursday
File first-ready, first-serve application with FERC	Pac Trans	01/31/2020	Friday
Issue IE RFP for OR	OR Docket	02/24/2020	Monday
Notify Oregon parties of RFP and IE need	OR Docket	02/24/2020	Monday
OR IE bids due	OR Docket	03/09/2020	Monday
OR workshop with IE stakeholders on RFP modeling and scoring	OR Docket	03/12/2020	Thursday
OR workshop with IE stakeholders on IE candidates	OR Docket	03/16/2020	Monday
Open OR RFP Docket, Initiate IE approval process	OR Docket	03/23/2020	Monday
Pre-issuance RFP bidder's conference Utah	UT Docket	03/25/2020	Wednesday
Effective date of first-ready, first-serve application from FERC	Pac Trans	04/01/2020	Wednesday
OR Commission public meeting approving IE and scoring	OR Docket	04/07/2020	Tuesday
Execute contract with Oregon IE	OR Docket	04/09/2020	Thursday
File draft RFP application with UT Commission	UT Docket	04/09/2020	Thursday
File notice to bidders on RFP schedule and timeline	UT Docket	04/09/2020	Thursday
Initial draft RFP distributed to Oregon IE and parties in IE Docket	OR Docket	04/10/2020	Friday
Bidder and stakeholder workshop to discuss draft All-Source RFP	OR Docket	04/14/2020	Tuesday
File final draft RFP with OR Commission	OR Docket	04/24/2020	Friday
IEs joint discussion on draft RFP	RFP	04/15/2020	Wednesday
OR IE files report on final draft RFP	OR Docket	04/27/2020	Monday
OR party comments on final draft RFP	OR Docket	05/11/2020	Monday
UT stakeholder party comments on RFP draft	UT Docket	05/18/2020	Monday
PacifiCorp reply comments on final draft RFP	OR Docket	05/22/2020	Friday
UT IE comments on RFP due	UT Docket	05/28/2020	Thursday
IEs joint discussion on final draft RFP	RFP	06/12/2020	Friday
All party reply comments due	UT Docket	06/13/2020	Saturday
OR Commission Special Public Meeting approving RFP	OR Docket	06/23/2020	Tuesday
UT Commission decision on RFP	UT Docket	06/23/2020	Tuesday
RFP Issued to market	RFP	06/29/2020	Monday
Provide models and assumptions to OR IE	OR Docket	06/30/2020	Tuesday
Provide models and assumptions to UT IE & DPU	UT Docket	06/30/2020	Tuesday
1st bidder's conference	UT Docket	07/07/2020	Tuesday
IE joint discussion on models and assumptions	RFP	07/08/2020	Wednesday
Notice of Intent to Bid due	RFP	07/14/2020	Tuesday
Last day for RFP questions to IEs for Q&A	RFP	07/24/2020	Friday
RFP bids due	RFP	07/29/2020	Wednesday
Bid eligibility screening completed	RFP	08/03/2020	Monday
Initial Shortlist (ISL) evaluation/scoring completed	RFP	08/17/2020	Monday
IRP modeling generates ISL	RFP	10/05/2020	Monday
OR IE files status report on bid scoring	OR Docket	10/06/2020	Tuesday
IEs' review of ISL completed	RFP	10/09/2020	Friday
PacifiCorp notifies bidders selected to ISL	RFP	10/14/2020	Wednesday
ISL bidders notify Pac Trans to enter cluster study	RFP	10/15/2020	Thursday
Capacity factor and BESS evaluation on ISL started	RFP	10/19/2020	Monday
Begin contract review and negotiations with ISL (subject to OAR waiver)	RFP	10/19/2020	Monday
Capacity factor and BESS evaluation on ISL completed	RFP	12/15/2020	Tuesday
Complete contract negotiations on near final draft with bidders	RFP	03/31/2021	Wednesday

<b>Milestone</b>	<b>Type</b>	<b>Date</b>	<b>Day</b>
Cluster study results posted to OASIS / bidders notified by Pac Trans	Pac Trans	04/15/2021	Thursday
Bidders provide ISL price update	RFP	04/22/2021	Thursday
Submit updated bids to IRP modeling	RFP	04/27/2021	Tuesday
IRP modeling generates Final Shortlist (FSL)	RFP	05/20/2021	Thursday
Final Shortlist (FSL) selected	RFP	05/25/2021	Tuesday
IEs' review of FSL Completed	RFP	06/01/2021	Tuesday
OR IE files status report on sensitivity analysis	OR Docket	06/08/2021	Tuesday
Final Shortlist filed with OR Commission for acknowledgement	OR Docket	06/10/2021	Thursday
Winning Bids filed with UT Commission	UT Docket	06/10/2021	Thursday
OR IE Files RFP Closing Report	OR Docket	06/17/2021	Thursday
OR Party Comments on IE Closing Report	OR Docket	07/06/2021	Tuesday
OR Commission Public Meeting acknowledging FSL	OR Docket	08/03/2021	Tuesday
OR Commission FSL Acknowledgement Order	OR Docket	09/09/2021	Thursday
UT Commission Order in Pre-approval Proceeding	UT Docket	09/15/2021	Wednesday
Complete negotiation of T&Cs for resource agreements	RFP	10/15/2021	Friday
Execute Agreements	RFP	11/08/2021	Monday
File public summary of RFP results with OR Commission	OR Docket	11/15/2021	Monday
Make bid score available to bidder upon request	OR Docket	11/15/2021	Monday
Winning Bid Guaranteed COD	RFP	12/31/2024	Tuesday

**Attachment B**

**OREGON COMPETITIVE BIDDING RULES  
ORDER 18-324**

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

AR 600

In the Matter of Rulemaking Regarding  
Allowances for Diverse Ownership of  
Renewable Energy Resources.

ORDER

DISPOSITION: NEW RULES ADOPTED

In this order we adopt competitive bidding rules that allow for diverse ownership of resources, consistent with Section 6 of 2016 Senate Bill 1547.<sup>1</sup> These rules are the culmination of two years of engagement between Staff, stakeholders and this Commission, building on decades of direct experience with competitive bidding guidelines in Oregon.

**I. INTRODUCTION**

Senate Bill 1547 Section 6 amends ORS 469A.075, requiring that the Commission to adopt rules “[p]roviding for the evaluation of competitive bidding processes that allow for diverse ownership of renewable energy sources that generate qualifying electricity.”<sup>2</sup> In Order No. 16-188, we opened this permanent rulemaking docket to implement this requirement.

In May 2016, Staff began efforts to work informally with stakeholders to further define the scope and purpose of the rulemaking, and to develop proposed rules. Staff held seven workshops and sponsored several rounds of informal comments. On January 18, 2018, Staff presented its proposed rules at a public meeting, and we adopted the recommendation to proceed to formal rulemaking and to provide policy guidance. We held a workshop on March 6, 2018, to consider policy questions, and on March 19, 2018, we provided guidance in Order No. 18-087.

On April 18, 2018, we filed a Notice of Proposed Rulemaking Hearing and Statement of Need and Fiscal Impact for this rulemaking with the Secretary of State, and we provided

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<sup>1</sup> Codified in Oregon Laws 2016, Chapter 28, Section 6.

<sup>2</sup> Senate Bill 1547 (2016) at Section 6.

notice to all interested persons on the service lists established under OAR 860-001-0030(1)(b) and to legislators specified in ORS 183.335(1)(d). Notice of the rulemaking was published in the May 2018 Oregon Bulletin, setting a hearing date of May 16, 2018.

We held a rulemaking hearing on May 16, 2018. Prior to the hearing, written comments were filed by the Joint Utilities (PacifiCorp, dba Pacific Power; Idaho Power Company; and Portland General Electric Company (PGE)). At the hearing, Staff, PGE, PacifiCorp, the Alliance of Western Energy Consumers (AWEC), the Northwest and Intermountain Power Producers Coalition (NIPPC), and Idaho Power offered comments on the proposed rules. Post-hearing written comments were filed by NIPPC, the Joint Utilities, Staff, AWEC, and Renewable Northwest. We closed the comment period on June 15, 2018.

We discussed the proposed rules at our Regular Public Meeting on August 28, 2018, and adopted the rules attached as Appendix A and made the decisions reflected in this order during that meeting.

## II. DISCUSSION

Below, we address significant issues we considered in adopting these rules. In this discussion, we summarize comments from stakeholders and electric companies, as well as Staff. We provide our decision and where appropriate clarify some of the implications of the adopted rules.

### A. Applicability of the Rules and Waivers – OAR 860-089-0010

#### a. *Comments*

The Joint Utilities seek two changes to the proposed rules regarding resources acquired outside the competitive bidding process. First, the proposed rules require an electric company to file a waiver if it intends to acquire a resource outside of the rules. According to the rules, that waiver request is to be made at the time of the resource acquisition, which is defined as:

[A] process for the purpose of acquiring energy, capacity or storage resources that starts with an electric company's:

- (a) Circulation of a final or draft RFP to third parties; or
- (b) Communication of an offer or receipt of an offer in a two-party negotiation.



The Joint Utilities argue that a resource acquisition may be abandoned after studies or negotiations, and so the filing of a waiver could be a waste of resources if a utility is in an exploration phase.

Second, the Joint Utilities also request that the proposed rules be amended to remove language that preclude acknowledgement of a resource if it is acquired before a waiver is filed. Staff opposes this change.

*b. Resolution*

We modify the resource acquisition definition to apply to the communication of a “final” offer, or receipt of a “final” offer. Although the resource acquisition language proposed in rules does not trigger a waiver in the case of study or negotiation, but rather only upon the circulation of an RFP or the communication of an offer, we acknowledge that general offers may be made very early in the resource acquisition process. Accordingly, we make changes to reflect the reality that offers made early in a negotiation are not analogous to final offers. This language is intended to apply our competitive bidding rules before a utility is contractually bound to a resource, but should also leave utilities with ample flexibility to engage in negotiations without triggering the rules.

We decline to remove rule language that precludes acknowledgement of a resource if it is acquired before a waiver is filed. We believe that an RFP conducted consistent with the rules is more likely to result in a low-cost, low-risk resource acquisition than an RFP conducted outside of the rules. Despite this presumption, these rules preserve the province of utility management to make its own resource decisions, including a decision to secure a resource outside our competitive bidding rules, with or without a waiver. If a utility secures a resource outside the rules, we see little value to an after-the-fact Commission acknowledgment. In this way, our clear preference for an RFP conducted within the confines of the rules is expressed, but utility management judgement is preserved. A utility that fails to act within these rules, or fails to seek or secure an applicable waiver, will need to justify that decision during a subsequent rate proceeding.

**B. Express Purpose of Rules – OAR 860-089-0015**

*a. Comments*

The Joint Utilities want to add the minimization of risks to the minimization of energy costs in the purpose statement of the rules. Staff opposes this change.

*b. Resolution*

We accept the proposal of the Joint Utilities to include risk in the purpose statement in the rules. It is our longstanding policy to analyze resource acquisition in the context of both cost and risk. The inclusion of risk in the purpose statement will align these rules with that policy. For simplicity, we also incorporate the policy statement with the applicability statement for these rules in OAR 860-089-0010.

**C. Definition of Emergency – OAR 860-089-0100(3)(a)**

*a. Comments*

The Joint Utilities propose to expand language that defines an “emergency” for purposes of allowing the acquisition outside the competitive bidding process under certain circumstances. Staff opposes this change arguing the Joint Utilities’ definition is too expansive.

*b. Resolution*

We make no changes to the proposed definition of emergency, which includes the terms “catastrophe” and “unusual and unexpected.” We decline the Joint Utilities’ proposal to modify the definition to expand this exception to situations beyond what we believe to be a common understanding of an “emergency.”

**D. Impartiality of the IE - OAR 860-089-0200**

*a. Comments*

The Joint Utilities seek to add language to the definition of an independent evaluator (IE), which would require IE independence from utilities and bidders.

*b. Resolution*

We adopt the change supported by the Joint Utilities. We expect that the IE will be independent from utilities and bidders, but clarify that “independence” should not be defined so narrowly as to prevent the hiring of an IE that has previously contracted with a potential or anticipated bidder in an unrelated matter.

**E. Size and Applicability Threshold – OAR 860-089-0100(1)(a)***a. Comments*

The Joint Utilities oppose the proposal to lower the applicability standard for competitive bidding requirements from the current 100 megawatt (MW) threshold to 50 MW, both for general resources and for storage resources. They oppose the definition for several reasons, including cost and inconsistency with PURPA's 80 MW threshold. The Joint Utilities suggest a retaining the 100 MW threshold, including for storage resources. In the alternative, the Joint Utilities suggest a 60 MW threshold for storage resources.

*b. Resolution:*

We adopt an applicability threshold of 80 MW, which is higher than Staff's proposed 50 MW threshold but lower than the Joint Utilities threshold proposal of 100 MW. We find that this 80 MW level aligns with the applicability of PURPA requirements for utilities, and provides a natural dividing line between large projects that are the intended focus of these rules, and smaller projects that are implicated by a wide variety of Commission rules and procedures including PURPA enforcement and community solar legislation.

We also note that the adopted rules are applicable to aggregate acquisitions that are equal to or greater than 80 MW, not just single resources of 80 MW or greater. This language is intended to capture acquisitions that have a large system impact, but are accomplished on a smaller individual or distributed scale. As utilities and the Commission move towards more innovative and distributed solutions to system needs, we expect this language to apply competitive bidding requirements to those distributed solutions where they reach an 80 MW aggregate target.

We also eliminate previous references to a separate storage threshold. We find that the main justification for a separate, lower storage applicability threshold is not justified. A separate storage threshold has been supported by the argument that storage may be more costly on a per MW or megawatt-hour (MWh) basis than other resources. This justification has been overtaken by the rapidly falling costs of storage resources. We expect that storage resources will become increasingly competitive in future RFPs.

We recognize, however, that since storage represents an important emerging resource on which we and the state have placed special emphasis, we may wish to require in the future that a smaller storage resource acquisition should be subject to these competitive bidding requirements. Accordingly, we have included language in these rules that allows

the Commission to apply competitive bidding rules at our discretion, regardless of resource acquisition size, on a case-by-case basis.

Finally, to clarify the applicability of these rules, we modify language in proposed OAR 860-089-0100(1) to state that an electric company “must comply with the rules in this division when it seeks to acquire generating or storage resources or to contract for energy or capacity” if any of the identified criteria apply.

**F. Applicability to Undefined Resource Acquisitions – OAR 860-089-0100(1)(b)**

*a. Comments*

The Joint Utilities are concerned that the requirement that an all-source, undefined capacity RFP will limit some of the activities that utilities may engage in, including requests for interest (RFIs) and preliminary explorations of options. They propose language that would allow all such activity up until the time that it becomes “reasonably likely that a transaction” will emerge.

*b. Resolution*

We make no changes to this part of the rule. We find that the changes we have made to the resource acquisition definition, which include references to final offers, adequately addresses the concerns expressed by the Joint Utilities.

**G. Applicability to Transmission Acquisitions – OAR 860-089-0100(3)(d)**

*a. Comments*

The proposed rules clarify that transmission assets are not subject to the rules. The Joint Utilities want to ensure that they also do not apply to transmission rights.

*b. Resolution*

We revise the rules to clarify that the competitive bidding requirements do not generally apply where a utility is seeking to exclusively acquire transmission assets or rights.

**H. IE Requirement in the Case of No Possibility of Utility Ownership –  
OAR 860-089-0200**

*a. Comments*

One of the central points of disagreement in Staff's proposed rules is the language in the applicability section allowing the Commission to drop the IE requirement if utility ownership of resources is not contemplated in the RFP. Joint Utilities propose to eliminate this language, and instead allow a case-by-case exemption. NIPPC and Staff argue in favor of the rule. NIPPC argues that the provision should be more explicitly tied to the ownership structure proposed.

*b. Resolution*

The adopted rules eliminate any separate treatment between RFPs that contemplate utility ownership of resources and those that do not. While we recognize the position of Staff and some stakeholders arguing that competitive bidding rules largely serve to protect against the well-recognized utility bias in favor of ownership of resources, we find that the application of the rules and the involvement of the IE will have intrinsic value in any RFP circumstance. As we have previously held:

We conclude that an IE should be used for all RFPs. While an IE's role is not as involved for an RFP without ownership options of Affiliate Bidding, we find that using an IE has value.<sup>3</sup>

Our decision is bolstered by the IE cost data provided by Staff in this proceeding. In the context of a large resource investment of 80 MW or more, an average cost of \$254,000-\$329,000 is a meaningful amount, but justified by the fact the IE involvement is likely to lead to more competitive RFPs, and lower-cost, lower-risk resource decisions.<sup>4</sup> While impossible to quantify, we anticipate that the costs of the IE over the long term will more than be outweighed by the savings to ratepayers that are likely to result from higher-quality, more competitive RFP processes. Should IE costs increase, or should resource costs or our rule applicability threshold change to such a degree that IE costs become a more significant cost as compared to anticipated resource costs, we will re-evaluate this decision.

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<sup>3</sup> See Docket UM 1182, *In the Matter of PUBLIC UTILITY COMMISSION OF OREGON Investigation Regarding Competitive Bidding*, Order No. 06-446 at 6.

<sup>4</sup> Staff's Initial Comments at 2, June 11 2018.

Finally, we note that the value in a proceeding created by IE is dependent on the level of engagement that the Commission and Commission Staff provide to the IE. Staff brings a detailed and extensive understanding of RFP and resource selection standards to the process, while the IE brings detailed technical, financial, and transactional knowledge and experience. In working together, we are confident that the engagement of an IE with active management from Staff will help lead to better procurements in partnership with utilities.

**I. Design of Requests for Proposals – OAR 860-089-0250**

*a. Comments*

The proposed rules require that the scoring and methodologies used in the RFP be consistent with those from the IRP. Where they are not, the utility is required to file alternative scoring prior to the filing of the RFP and support the change from the IRP. The Joint Utilities oppose a separate filing, and suggest that if a utility chooses to change its scoring, the Commission may impose a longer review time frame.

*b. Resolution*

We retain the requirement for a separate filing when a utility chooses to deviate from the scoring methodology identified in the acknowledged IRP. Clearly expressing the system needs associated with a resource acquisition is an important objective reflected in these rules. Presenting those needs in detail and the scoring associated with an acquisition in the IRP will allow notice to prospective bidders and the opportunity for stakeholders to understand and, where necessary, for utilities and the Commission to improve the acquisition process. If a utility chooses to deviate from the scoring proposed in the RFP, the same sort of notice and review should be available to all stakeholders.

Additionally, we add language that clarifies how the RFP should be aligned with the IRP. Specifically, the RFP should be aligned with the need identified in the IRP to be addressed by the resource, rather than the specific resource alone.

**J. QF Limitations - OAR 860-089-0250**

*a. Comments*

The Joint Utilities seek new language in the rules that would act to limit qualifying facility (QF) participation in RFPs to those that have not yet executed a power purchase agreement, arguing that allowing this would upset resource planning assumptions.

*b. Resolution*

We decline to adopt the Joint Utilities' proposal. Where final offers from active or potential QFs are lower than avoided cost prices, the utility consumer will experience a net savings associated with the selection of a QF resource that has been bid into an RFP at a lower cost than currently or previously available or contracted avoided cost prices. If QF resources acquired in this way result in planning challenges and the need for additional resources, the utility would be justified in expanding the RFP to include those needed resources.

**K. Review Period – OAR 860-089-0250(6)**

*a. Comments*

The proposed rules allow for a possible 100-day RFP review period, but note that we may set a shorter period where appropriate. Joint Utilities propose to set the review at 60 days, reverting to current guidelines.

*b. Resolution*

We adopt an 80-day review period. The rules provide for a possible, but not required 100-day review period, and clearly contemplate that a utility may seek a shorter review period for good cause shown. A central objective of these rules is clarity, transparency, and notice for stakeholders in expression by the utility of system needs in an RFP. If a utility has clearly identified system needs, described scoring, methodologies, and other relevant details in advance of the RFP proceeding through the IRP process, as these rules encourage and contemplate, then good cause for a shorter review period could be justified upon request. However, we find that an 80-day review period is an appropriate starting point, and that 100 days will likely be excessive in most cases.

**L. Resource Ownership – OAR 860-089-0300**

*a. Comments*

The proposed rules wall off utility personnel who work to develop the RFP from those who work to develop the response to the RFP. Initially, the Joint Utilities sought to loosen this restriction, and only wall off personnel who *significantly* participate in the development of the RFP. Subsequently, the Joint Utilities proposed a wholesale revision to the rule that would require utilities to create a benchmark or affiliate team. The Joint

Utilities' proposal would prevent members of this team from participating in scoring of bids. The Joint Utilities' proposal would also allow any supporter of a team to provide support to any other team.

*b. Resolution*

We find that the Joint Utilities' proposal is overly complicated and would prove difficult to effectively enforce. In a competitive solicitation, it is not appropriate for those with internal perspective in the development of an RFP to participate in the development of a response to that RFP. However, we understand the Joint Utilities' concern that limited shared resources may necessitate some limited cross-over of roles. Accordingly, we note here that a utility may demonstrate that this provision should be waived for good cause shown.

**M. Third Party Access to Benchmark Bid Resources – OAR 860-089-0300**

*a. Comments*

The proposed rules encourage the opening of utility owned assets to third parties. The Joint Utilities seek to restrict this language to ensure that all utility assets that may be utilized by third parties are fully compensated by the third parties. The Joint Utilities also seek to limit the encouragement to only those assets that are already included in customer rates, which effectively exempts all utility assets that the utility intends to include in rates, but has not yet done so.

NIPPC argues for expansion of Staff's proposal and to make any utility decision not to offer important benchmark resources de-facto imprudent. NIPPC references recent RFPs in which transmission capacity constraints have effectively prevented or limited bidders and the number of viable bids as evidence of the need for this provision.

*b. Resolution*

We eliminate Staff's encouragement requirement in rule and instead require utilities to provide us with information that may be utilized in a subsequent prudence determination. The ultimate goal of a competitive bidding process is the identification of the lowest cost, lowest risk resource. More bids and more ownership options provide the opportunity to identify the lowest cost, lowest risk resource. We believe that the use of utility owned resources by third parties to develop additional or better, more efficient bids will help facilitate the objective of more and better proposal options. Though we eliminate the



encouragement provision in rule, we re-emphasize here that utilities are encouraged to offer elements of benchmark bids to third-party bidders.

The adopted rules do not require that a utility offer benchmark or utility owned resources to third-party bidders as part of the RFP. The decision whether or not to offer elements of a benchmark or utility owned resource to other parties in an RFP remains with utility management. The adopted rule requires that a filed analysis of the decision be provided to the Commission at the time of RFP development, as well in a subsequent prudence determination. We understand that there may be practical impediments to offering elements in certain circumstances. The required explanation will provide an early opportunity for the utility to begin to demonstrate that its decision not to offer elements is reasonable and prudent.

We add clarification in the rules to ensure that adequate protection is given to utilities offering resource elements. Full compensation will be provided for any utility resource element used by a third party bidder. This portion of the rule will ensure that the utility and its shareholders are not economically disadvantaged in any way when resource elements are offered to third parties.

Finally, we clarify that separate utility affiliates need not offer any resource elements to their other bidders nor explain their decision not to offer such elements. A separate affiliate, like a private third party bidding on an RFP, operates in a higher-risk highly competitive environment and it should not be obligated to provide access to its proprietary assets to other competitive entities.

**N. Benchmark Resource Score – OAR 860-089-0350**

*a. Comments*

This section in the proposed rules contains numerous references to the submission of benchmark score information to the IE and “Commission Staff.” The Joint Utilities recommend eliminating references to Commission Staff to reflect current practice.

*b. Resolution*

We eliminate references to Commission Staff, and replace them with the Commission, which is inclusive of Commission Staff. This change does not limit Staff’s access to information in any way. Where access to information is referenced, we make clear in this order that the term “Commission” includes its Staff.

**O. Bid Scoring – OAR 860-089-0400***a. Comments*

The Joint Utilities raise four points with regard to rules governing bid scoring. First, the Joint Utilities argue that the requirement that bids be subject to self-scoring may not be practical in some circumstances and recommend language to provide for more utility deviation from this standard. Second, the Joint Utilities object to the requirement that non-price scoring factors that are effectively minimum thresholds or standards be converted into such. Third, the Joint Utilities recommend we eliminate references to “generic fill” in the rules. Finally, the Joint Utilities do not want production cost and risk models made available to Commission Staff or any parties.

*b. Resolution*

We make only one substantive change to the proposed rules and remove the language referencing generic fill because it is an illustrative example. We clarify, however, that the provisions of OAR 860-089-0400(5) are specifically designed to address such issues as the use of generic fill.

In the context of an RFP, it is important to understand when utility assumptions embedded in generic fill, or other IRP values, become the determinative or dominant factor in a resource decision. For example, when a resource is lowest cost and lowest risk in the near term, but because of a short term length it is not selected due to the assumptions associated with “generic fill,” that decision should be subject to greater scrutiny. Importantly, the rule does not eliminate the possibility of a resource decision heavily influenced by generic fill, but it does provide for a sensitivity analysis necessary to effectively examine such a decision. In this way, utility management discretion to rely on generic fill as an important factor in bid scoring is retained.

We make no other significant changes to Staff’s bid scoring proposal. Effectively, Staff’s language allows utilities two options when reviewing non-price attributes: convert the attribute into a characteristic that can be objectively scored, or make the attribute a minimum threshold.

In the interests of clarity to bidders and the Commission, if the utility has identified a minimum standard, the RFP should clearly designate that standard. The rules require that minimum standards are not to be buried in complicated scoring criteria, but are spelled out clearly in the RFP. Thus, bidders who cannot meet the standard do not waste time and resources attempting to respond, and utilities and the IE are not forced to assess

proposals with no chance of selection due to the failure to achieve a minimum standard that was not clearly identified in the RFP.

**P. Independent Evaluator Duties – OAR 860-089-0450**

*a. Comments*

The Joint Utilities raise three issues with proposed language governing an IE's duties. First, they argue that the proposed rules lack symmetry in the evaluation of utility and non-utility owned resources in that they require IE analysis of certain utility owned issues and factors but leave analysis of the same factors optional for non-utility owned assets. Second, the Joint Utilities object to the proposal to require the IE and the utility to report scores to the Commission Staff before reconciliation, arguing it is inconsistent with current practice. Third, the Joint Parties oppose the requirement that the IE, as part of the IE report, provide a review of the process and finding on whether or not it allowed the "opportunity for diverse ownership." The Joint Utilities object to this provision, arguing that it is too nebulous and should be stricken.

*b. Resolution*

We adopt the Joint Utilities suggestion to eliminate a reporting requirement on the "opportunity for diverse ownership." Although we agree with Staff that this is an essential question, we leave it to our Staff or ourselves, on a case-by-case basis, to ask this question of the IE as part of the reporting process.

We decline to adopt the Joint Utilities suggestion to change the IE review of issues related to ownership. "May" in this part of the rule refers to the fact that many of the attributes to be examined are not applicable to common third-party owned contract structures, such as PPAs. For example, construction cost overruns are not significant issues in the context of a PPA. In a PPA, an owner agrees to deliver energy or capacity at a specific quantity, time, and price. Whether or not the project is completed on budget is not a risk borne by the ratepayer under such a contract. If on the other hand, the PPA agreement contained provisions that added some risk to ratepayers for construction cost overruns, then it would be appropriate for the IE to evaluate that aspect of the proposal. Accordingly, the "may" language in the rule is appropriately flexible.

Finally, we add language to the rule consistent with our revision to OAR 860-089-0300 on resource ownership, which will help us build a record for prudence review. This language requires the IE to review the utility rationale for offering or declining to offer benchmark elements to third parties as part of the reporting requirement.

**Q. Final Shortlist Acknowledgement – OAR 860-089-0500***a. Comments*

The Joint Utilities seek two changes to rules governing the Commission’s review of the final short-list. First, they proposed language to require a Commission decision within 60 days, rather than the proposed “generally” within 60 days. Second, they oppose the requirement that a utility file a non-confidential filing of average bid score and average price of a resource on the final shortlist. The Joint Utilities contend this requirement would “chill bidder participation and reduce competition.”

*b. Resolution*

We decline to remove the word “generally” from the final shortlist acknowledgement rule. We find that in unusual circumstances where a shortlist needs special examination due to complicated issues, we may need more than 60 days to rule on acknowledgement. Additionally, we find that the publication of average bid score information and pricing will not chill participation. The entities representing bidders have not objected to this provision, and it eliminates reference to a particular score by utilizing an average. However, we recognize that there may be circumstances where it is appropriate to waive this requirement; such as where a shortlist is unusually limited.

**R. Protected Information – OAR 860-089-0550***a. Comments*

The Joint Utilities seek to eliminate access to non-bidding parties, even under protective order – because non-bidding parties may disclose information that would distort markets and damage competition.

*b. Resolution*

At this time, absent any specific demonstration of examples of protected information disclosure, we will not automatically eliminate access to protected information to a class of parties. We trust in the professional standards of the energy bar in Oregon, and expect all parties, individuals, and organizations trusted with protected information to strictly adhere to the letter and spirit of our protective orders. It is our conclusion that in practice, this has occurred and will continue to occur. However, this trust can and will be revoked if professional standards break down and information is disclosed improperly.

**S. Applicability of Rules***a. Comments*

The Joint Utilities request that any adopted rules are applied prospectively, and not to procurements currently underway.

*b. Resolution*

We agree with the Joint Utilities. The adopted rules will apply only to RFPs filed after the rules become effective when filed with the Secretary of State.

**T. NIPPC due diligence language***a. Comments*

Throughout this rulemaking, NIPPC has argued for the inclusion of language in this rule that would require a separate examination of the prospective of a benchmark or utility owned bid to acquire private financing. NIPPC contends that private financing entities impose higher standards and test project assumptions with more rigor than is imposed by the utility on its own bids. According to NIPPC this type of review, conducted by an independent financial analysis firm, would yield important information as part of shortlist review.

The Joint Utilities oppose inclusion of this language. First, they argue that the language developed by NIPPC is complicated, and that it is not clear that the analysis would yield any useful information. Second, they contend that the language introduces bias against utility owned resource into the rules, in that it does not require analysis for non-benchmark proposals.

Staff found enough potential value from the language to make it part of initial draft rules submitted to us. We ordered Staff to remove it, because we decided that the language lacked clarity, and we invited proponents to make the case for the language and propose improvements.

*b. Resolution*

We decline to adopt NIPPC's revised due diligence proposal. We appreciate the way NIPPC has responded to our request, working to improve their proposal. NIPPC's

revised language submitted in comments presents a much clearer provision. Ultimately, however, we are not persuaded that the value of this exercise will justify its cost.


We determine that the adopted rule, which in many ways adds transparency and clarity to the process, will provide a more level playing field to third-party bidders, and that the additional language proposed by NIPPC may be obviated by the many provisions in adopted rules that strengthen the fairness of treatment between third-party owned proposals and utility owned proposals.


**ORDER**

IT IS ORDERED that:

1. OAR 860-089-0010 through 860-089-0550 are adopted as set forth in Appendix A to this order.
2. The new rules will be effective upon filing with the Secretary of State.

Made, entered, and effective                     AUG 30 2018                    .

  
 \_\_\_\_\_  
**Megan W. Decker**  
 Chair

  
 \_\_\_\_\_  
**Stephen M. Bloom**  
 Commissioner

  
 \_\_\_\_\_  
**Letha Tawney**  
 Commissioner



A person may petition the Commission for the amendment or repeal of a rule under ORS 184.390. A person may petition the Court of Appeals to determine the validity of a rule under ORS 183.400.

**DIVISION 089**  
**Resource Procurement for Electric Companies**

**860-089-0010****Applicability and Purpose of Division 089**

(1) The rules contained in this Division apply to electric companies, and are intended to provide an opportunity to minimize long-term energy costs and risks, complement the integrated resource planning (IRP) process, and establish a fair, objective, and transparent competitive bidding process, without unduly restricting electric companies from acquiring new resources and negotiating mutually beneficial terms.

(2) Upon request or its own motion, the Commission may waive any of the Division 089 rules for good cause shown. A request for waiver must be made in writing to the Commission prior to or concurrent with the initiation of a resource acquisition.

(a) In addition to the filing requirements in OAR Chapter 860, Division 001, an electric company filing a request for waiver under this section must serve the request on all parties to the electric company's most recent general rate case, request for proposal (RPF) filing, and IRP docket.

(b) If a request for waiver is filed by an electric company after it acquires a resource, granting, if any, of the waiver request does not result in or equate to the Commission's acknowledgment of the resource acquisition.

Stat. Auth.: ORS Ch. 183, 756, 758, 2016 OL Ch. 28

Stats. Implemented: ORS 756.040, 758.060, 2016 OL Ch. 28. Sect. 6

Hist.: NEW

**860-089-0020****Definitions**

For purposes of this Division, unless the context requires otherwise:

(1) "Benchmark resource" is a resource identified in an electric company's response to its own request for proposals.

(2) "Commission-acknowledged IRP" means an IRP for which the Commission has acknowledged the electric company's action item to procure the resource subject to the rules in this division.

(3) "Electric company" has the meaning given that term in ORS 757.600.

(4) "Independent evaluator" or "IE" refers to a person engaged by an electric company to oversee an RFP process under the rules in this division, and who also reports directly to the Commission during that process. The IE must be independent of the utility and bidders, and also be experienced and competent to perform all IE functions identified in these Division 089 rules.

(5) "Integrated resource plan" or "IRP" has the meaning given that term in OAR 860-027-0400.

(6) "IRP Update" means an update to an acknowledged IRP that is filed in accordance with OAR 860-027-0400(9).

(7) "Qualifying facility" refers to qualifying facilities under 16 USC § 796(17) and (18) (2012) and ORS 758.505(8).

(8) "Request for proposals" or "RFP" means all documents, whether attached or incorporated by reference, used for soliciting proposals from prospective bidders.

(9) “Resource acquisition” refers to a process for the purpose of acquiring energy, capacity, or storage resources that starts with an electric company’s:

- (a) Circulation of a final or draft RFP to third parties; or
- (b) Communication of a final offer or receipt of a final offer in a two-party negotiation.

Stat. Auth.: ORS Ch. 183, 756, 758, 2016 OL Ch. 28

Stats. Implemented: ORS 756.040, 758.060, 2016 OL Ch. 28, Sect. 6

Hist.: NEW

## **860-089-0100**

### **Applicability of Competitive Bidding Requirements**

(1) An electric company must comply with the rules in this division when it seeks to acquire generating or storage resources or to contract for energy or capacity if any of the following apply:

(a) The acquisition is of a resource or a contract for more than an aggregate of 80 megawatts and five years in length;

(b) The acquisition is of a resource or contract in which the electric company does not specify the size or duration of the resource or contract sought but may result in an acquisition described in subsection (1)(a) or (1)(c) of this rule;

(c) The acquisition is of multiple resources more than five years in length that in aggregate provide the electric company with more than an aggregate of 80 megawatts, and these resources:

(A) Are located on the same parcel of land, even if such parcel contains intervening railroad or public rights of way, or on two or more such parcels of land that are adjacent; and

(B) The generation equipment of any one of these resources is within five miles of the generation equipment of any other of these resources and construction of these resources is performed under the same contract or within two years of each other; or

(d) As directed by the Commission.

(2) An electric company may request that the Commission find that resources presumed to be subject to subsection (1)(c) of this rule should not be considered in the aggregate. The electric company may make this request before acquiring the resources. The electric company bears the burden of rebutting the presumption that the acquisition is subject to these rules by showing each resource is separate and distinct.

(3) An electric company is not required to comply with the competitive bidding requirements to acquire a resource otherwise subject to section (1) of this rule when:

(a) There is an emergency; meaning a human-caused or natural catastrophe resulting from an unusual and unexpected event, including but not limited to earthquake, flood, war, or a catastrophic energy plant failure, that requires an electric company to take immediate action;

(b) There is a time-limited opportunity to acquire a resource of unique value to the electric company’s customers;

(c) An alternative acquisition method was proposed by the electric company in the IRP and explicitly acknowledged by the Commission; or

(d) Seeking to exclusively acquire transmission assets or rights.

(4) Within 30 days of seeking to acquire a resource under section (3) of this rule, the electric company must file a report with the Commission explaining the relevant circumstances. The report must be served on all the parties to the electric company's most recent rate case, RFP, and IRP dockets.



Stat. Auth.: ORS Ch. 183, 756, 758, 2016 OL Ch. 28  
Stats. Implemented: ORS 756.040, 758.060, 2016 OL Ch. 28, Sect. 6  
Hist.: NEW

**860-089-0200****Engaging an Independent Evaluator**

(1) Prior to issuing an RFP, an electric company must engage the services of an IE to oversee the competitive bidding process. The electric company must notify all parties to the electric company's most recent general rate case, RFP, and IRP dockets of its need for an IE, and solicit input from these parties and interested persons regarding potential IE candidates.

(2) The electric company must file a request for Commission approval to engage an IE. The Commission Staff will review the request and recommend an IE to the Commission based in part on the consideration of:

- (a) Input received from the electric company and interested, non-bidding parties;
- (b) Review of the degree to which the IE is independent of the electric company and potential bidders;
- (c) The degree to which the cost of the services to be provided is reasonable;
- (d) The experience and competence of the IE; and
- (e) The public interest.

(3) The electric company is responsible for engaging the services of the IE and is responsible for all fees and expenses associated with engaging the IE's services. The electric company may request recovery of fees and expenses associated with engaging an IE in customer rates.

(4) The electric company's contract with the IE must require that the IE fulfills its duties under these rules and that the IE confers as necessary with the Commission and Commission Staff on the IE's duties.

Stat. Auth.: ORS Ch. 183, 756, 758, 2016 OL Ch. 28  
Stats. Implemented: ORS 756.040, 758.060, 2016 OL Ch. 28, Sect. 6  
Hist.: NEW

**860-089-0250****Design of Requests for Proposals**

(1) For each resource acquisition, the electric company must prepare a draft request for proposals for review and approval with the Commission, and provide copies of the draft to all parties to the IE selection docket. Prior to filing the draft RFP with the Commission, the electric company must consult with the IE in preparing the RFP and must conduct bidder and stakeholder workshops.

(2) The draft RFP must reflect any RFP elements, scoring methodology, and associated modeling described in the Commission-acknowledged IRP. The electric company's draft RFP must reference and adhere to the specific section of the IRP in which RFP design and scoring is described.

(a) Unless the electric company intends to use an RFP whose design, scoring methodology, and associated modeling process were included as part of the Commission-acknowledged IRP, the electric company must, prior to preparing a draft RFP, develop and file for approval in the electric company's IE selection docket, a proposal for scoring and any associated modeling.

(b) In preparing its proposal, the electric company must consider resource diversity (*e.g.* with respect to technology, fuel type, resource size, and resource duration).

(3) At a minimum, the draft RFP must include:

(a) Any minimum bidder requirements for credit and capability;

(b) Standard form contracts to be used in acquisition of resources;

(c) Bid evaluation and scoring criteria that are consistent with section (2) of this rule and with OAR 860-089-0400;

(d) Language to allow bidders to negotiate mutually agreeable final contract terms that are different from the standard form contracts;

(e) Description of how the electric company will share information about bid scores, including what information about the bid scores and bid ranking may be provided to bidders and when and how it will be provided;

(f) Bid evaluation and scoring criteria for selection of the initial shortlist of bidders and for selection of the final shortlist of bidders consistent with the requirements of OAR 860-089-0400.

(g) The alignment of the electric company's resource need addressed by the RFP with an identified need in an acknowledged IRP or subsequently identified need or change in circumstances with good cause shown; and

(h) The impact of any applicable multi-state regulation on RFP development, including the requirements imposed by other states for the RFP process; and

(4) An electric company may set a minimum resource size in the draft RFP, but it must allow qualifying facilities that exceed the eligibility cap for standard avoided cost pricing to participate as bidders.

(5) The Commission may approve the RFP with any conditions it deems necessary, upon a finding that the electric company has complied with the provisions of these rules and that the draft RFP will result in a fair and competitive bidding process.

(6) The Commission will generally issue a decision approving or disapproving the draft RFP within 80 days after the draft RFP is filed. An electric company may request an alternative review period when it files the draft RFP for approval including a request for expedited review upon a showing of good cause. Any person may request an extension of the review period of up to 30 days upon a showing of good cause.

Stat. Auth.: ORS Ch. 183, 756, 758, 2016 OL Ch. 28

Stats. Implemented: ORS 756.040, 758.060, 2016 OL Ch. 28, Sect. 6

Hist.: NEW

### **860-089-0300**

#### **Resource Ownership**

(1) An electric company may submit or allow its affiliates to submit bids in response to the electric company's request for proposals.

(a) Electric company and affiliate bids must be treated in the same manner as other bids.

(b) Any individual who participates in the development of the RFP or the evaluation or scoring of bids on behalf of the electric company may not participate in the preparation of an electric company or affiliate bid and must be screened from that process.

(2) An electric company may propose a benchmark bid in response to its RFP to provide a potential cost-based alternative for customers. The electric company may make elements of the

benchmark resource owned or secured by the electric company (*e.g.*, site, transmission rights, or fuel arrangements) available for use in third-party bids.

(3) If benchmark bid elements secured by the electric company are not made available to all bidders, it must provide analysis explaining that decision when seeking RFP acknowledgement and recovery of the costs of the resource in rates.

(a) If electric company resources are offered and made available for use in third-party bids, then the RFP may provide for appropriate compensation of electric company resources by third-party bidders.

(b) Separate electric company affiliate bids are not subject to this section of this rule, and no information on any decision to offer the use of separate electric company affiliate-owned elements to third-parties is required to be supplied to the Commission.

(4) An electric company may consider ownership transfers within an RFP solicitation.

(5) The electric company issuing the RFP must allow independent power producers to submit bids with and without an option to renew, and may not require that bids include an option for transferring ownership of the resource.

Stat. Auth.: ORS Ch. 183, 756, 758, 2016 OL Ch. 28

Stats. Implemented: ORS 756.040, 758.060, 2016 OL Ch. 28, Sect. 6

Hist.: NEW

#### **860-089-0350**

##### **Benchmark Resource Score**

(1) Prior to the opening of bidding on an approved RFP, the electric company must file with the Commission and submit to the IE, for review and comment, a detailed score for any benchmark resource with supporting cost information, any transmission arrangements, and all other information necessary to score the benchmark resource. The electric company must apply the same assumptions and bid scoring and evaluation criteria to the benchmark bid that are used to score other bids.

(2) If, during the course of the RFP process, the Commission or the IE determines that it is appropriate to update any bids, the electric company must also make the equivalent update to the score of the benchmark resource.

(3) Before the IE provides the electric company an opportunity to score other bids, the electric company must file with the Commission and submit via a method that protects confidentiality the following information:

(a) The final benchmark resource score developed in consultation with the IE, and

(b) Cost information and other related information shared under this rule.

Stat. Auth.: ORS Ch. 183, 756, 758, 2016 OL Ch. 28

Stats. Implemented: ORS 756.040, 758.060, 2016 OL Ch. 28, Sect. 6

Hist.: NEW

#### **860-089-0400**

##### **Bid Scoring and Evaluation by Electric Company**

(1) To help ensure that the electric company engages in a transparent bid-scoring process using objective scoring criteria and metrics, the electric company must provide all proposed and final scoring criteria and metrics in the draft and final RFPs filed with the Commission.

(2) The electric company must base the scoring of bids and selection of an initial shortlist on price and, as appropriate, non-price factors. Non-price factors must be converted to price factors where practicable. Unless otherwise directed by the Commission, the electric company must use the following approach to develop price and non-price scores:

(a) Price scores must be based on the prices submitted by bidders and calculated using units that are appropriate for the product sought and technologies anticipated to be employed in responsive bids using real-levelized or annuity methods. The IE may authorize adjustments to price scores on review of information submitted by bidders.

(b) Non-price scores must, when practicable, primarily relate to resource characteristics identified in the electric company's most recent acknowledged IRP Action Plan or IRP Update and may be based on conformance to standard form contracts. Non-price scoring criteria must be objective and reasonably subject to self-scoring analysis by bidders.

(c) 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.

(d) 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 draft RFP to allow for public comment and Commission review of the justification for the proposed criteria.

(4) The electric company may select an initial shortlist of bids after it has scored the bids and identified the bids with top scores. Following selection of an initial shortlist of bids, the electric company may select a final shortlist of bids.

(5) Unless an alternative method is approved by the Commission under OAR 860-089-0250(2)(a), selection of the final shortlist of bids must be based on bid scores and the results of modeling the effect of candidate resources on overall system costs and risks using modeling methods that are consistent with those used in the Commission-acknowledged IRP.

(a) The electric company must use a qualified and independent third-party expert to review site-specific critical performance factors for wind and solar resources on the initial shortlist before modeling the effects of such resources.

(b) In addition, the electric company must conduct, and consider the results in selecting a final short list, a sensitivity analysis of its bid rankings that demonstrates the degree to which the rankings are sensitive to:

(A) Changes in non-price scores; and

(B) 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.

(6) The electric company must provide the IE and Commission with full access to its production cost and risk models and sensitivity analyses. When the IE and Commission concur that appropriate protections for protected information are in place, the electric company must provide access to such information to non-bidding interested parties that request the information in the final short list acknowledgment proceeding.

Stat. Auth.: ORS Ch. 183, 756, 758, 2016 OL Ch. 28

Stats. Implemented: ORS 756.040, 758.060, 2016 OL Ch. 28, Sect 6

Hist.: NEW

**860-089-0450****Independent Evaluator Duties**

(1) The IE will oversee the competitive bidding process to ensure that it is conducted fairly, transparently, and properly.

(2) The IE must be available and responsive to the Commission throughout the process, and must provide the Commission with the IE's notes of all conversations and the full text of written communications between the IE and the electric company and any third-party that are related to the IE's execution of its duties.

(3) The IE must consult with the electric company on preparation of the draft RFP and submit its assessment of the final draft RFP to the Commission when the company files the final draft for approval.

(4) The IE must check whether the electric company's scoring of the bids and selection of the initial and final shortlists are reasonable.

(5) To determine if the electric company's selections for the initial and final shortlists are reasonable, when the RFP allows bidding by the issuing electric company or an affiliate of the company, or includes resource ownership options for the electric company, the IE must independently score the affiliate bids and bids with ownership characteristics or options, if any, and all or a sample of the remaining bids. When the IE does not score all bids, and a request for acknowledgment of a final shortlist is pending before the Commission, as provided in OAR 860-089-0500; a participant in the acknowledgment proceeding may request that the Commission direct the IE to score all remaining bids or a broader sample.

(6) The IE must also evaluate the unique risks and advantages associated with any company-owned resources (including but not limited to the electric company's benchmark), and may apply the same evaluation to third-party bids, including an evaluation of the following issues:

(a) Construction 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) Reasonableness of forced outage rates;

(c) Reasonableness of any proposal or absence of a proposal to offer electric company owned or benchmark resource elements (e.g., site, transmission rights or fuel arrangements) to third-party bidders as part of the draft and final RFP;

(d) End effect values;

(e) Environmental emissions costs;

(f) Reasonableness of operation and maintenance costs;

(g) Adequacy of capital additions costs;

(h) Reasonableness of performance assumptions for output, heat rate, and power curve; and

(i) Specificity of construction schedules or risk of construction delays.

(7) The IE must review the reasonableness of any score submitted by the electric company for a benchmark resource. Once the electric company and the IE have both scored and evaluated the competing bids and any benchmark resource, the IE and the electric company must file their scores with the Commission. The IE and electric company must compare results and attempt to reconcile and resolve any scoring differences. If the electric company and IE are unable to resolve scoring differences, the IE must explain the differences in its closing report to the Commission.

(8) The IE must review the electric company's sensitivity analysis of the bid rankings required under OAR 860-089-0400 and file a written assessment with the Commission prior to the electric company requesting acknowledgment of the final short list.

(9) The IE must file a closing report with the Commission after the electric company has selected its final shortlist. The IE's closing report must include an evaluation of the applicable competitive bidding processes in selecting the least-cost, least-risk acquisition of resources. The Commission may request that the IE include additional analysis in its closing report.

(10) Unless the Commission directs otherwise, the IE must participate in the final short list acknowledgment proceeding initiated by the electric company, and must continue to participate if, at the time of acknowledgment of the electric company's final shortlist, the Commission chooses to require IE involvement through final resource selection. In addition to making a decision on acknowledgment, the Commission, on its own motion or at the request of other parties, including bidders, may require expanded IE involvement. Upon such a request or its own motion, the Commission may require an IE to be involved in the competitive bidding process through final resource selection.

Stat. Auth.: ORS Ch. 183, 756, 758, 2016 OL Ch. 28

Stats. Implemented: ORS 756.040, 758.060, 2016 OL Ch. 28, Sect. 6

Hist.: NEW

#### **860-089-0500**

##### **Final Short List Acknowledgement and Result Publication**

(1) For the purposes of this section, "acknowledgment" is a finding by the Commission that an electric company's final shortlist of bid responses appears reasonable at the time of acknowledgment and was determined in a manner consistent with the rules in this division.

(2) An electric company must request that the Commission acknowledge the electric company's final shortlist of bids before it may begin negotiations. Acknowledgment of a shortlist has the same legal force and effect as a Commission-acknowledged IRP in any future cost recovery proceeding.

(3) A request for acknowledgement must include, at a minimum, the IE's closing report, the electric company's final shortlist of responsive bids, all sensitivity analyses performed, and a discussion of the consistency between the final shortlist and the electric company's last-acknowledged IRP Action Plan or acknowledged IRP Update.

(4) The Commission will generally issue a decision on the request for acknowledgment within 60 days of receipt of the electric company's filing.

(5) The electric company must make a publicly available filing in the RFP docket providing the average bid score and the average price of a resource on its final shortlist.

(6) Following execution of all contracts resulting from an RFP or cancellation of the RFP, the electric company must provide information, on request, to a bidder about the bidder's bid score.

Stat. Auth.: ORS Ch. 183, 756, 758, 2016 OL Ch. 28

Stats. Implemented: ORS 756.040, 758.060, 2016 OL Ch. 28, Sect. 6

Hist.: NEW

**860-089-0550****Protected Information**

The electric company may request a protective order be issued prior to making available protected information required to be shared under the rules in this Division. Protected information may include, but is not limited to, RFP-related and bidding information, such as a company's modeling, cost support for any benchmark resource and detailed bid scoring and evaluation results. Protected information may then be provided to the Commission, the IE, and non-bidding parties, as appropriate under the terms of the protective order. Information shared under the terms of a protective order issued under this rule may be used in RFP review and approval, final shortlist acknowledgement, and cost-recovery proceedings.

Stat. Auth.: ORS Ch. 183, 756, 758, 2016 OL Ch. 28

Stats. Implemented: ORS 756.040, 758.060, 2016 OL Ch. 28, Sect. 6

Hist.: NEW

**Attachment C**

**PACIFICORP'S PROPOSED 2020AS RFP  
SCORING AND MODELING**



## Attachment C

### **PACIFICORP'S PROPOSED 2020AS RFP SCORING AND MODELING**

As of the date of this IE RFP, PacifiCorp Transmission has filed an application with the Federal Energy Regulatory Commission (FERC) proposing to reform its interconnection study process set forth in its Open Access Transmission Tariff (OATT). The filing proposes to replace the existing “serial queue” interconnection study process with a “first-ready, first-served, cluster” interconnection study approach. The proposal was filed on January 31, 2020 and has not yet been approved by FERC. However, in anticipation of queue reform being approved by FERC and in effect by April 1, 2020, PacifiCorp’s 2020AS RFP process for bid evaluation, scoring, modeling, and selection reflects PacifiCorp Transmission’s proposed queue reform process as described in its application at FERC. Eligibility requirements or evaluation criteria in the 2020AS RFP will be revised as necessary to align with the final version of interconnection queue reform approved by FERC before the 2020AS RFP is finalized and issued to the market. In the event that PacifiCorp Transmission’s queue reform application is not approved by the time the 2020AS RFP is finalized and issued to the market, PacifiCorp will revise the 2020AS RFP to ensure it is consistent with the current interconnection queue process as described in PacifiCorp Transmission’s OATT.

That said, PacifiCorp offers now that the crux of the expected difference between the two types of interconnection processing (i.e., serial-queue processing vs. “first-ready, first-served, cluster” processing) is *when* during the 2020AS RFP process PacifiCorp could consider a bidder’s interconnection documentation. More specifically, under the status quo serial-queue process, PacifiCorp could evaluate a bidder’s interconnection documentation earlier in the 2020AS RFP process because no bidder’s ability to receive an interconnection study would depend on satisfaction of the proposed queue reform commercial readiness criteria and completion of a future interconnection cluster study. Rather, a bidder will either have a serial-queue interconnection study or interconnection agreement with the requisite demonstrations by the applicable 2020AS RFP deadline, or it will not. Under a first-ready, first-served, cluster interconnection process, as proposed by PacifiCorp in its January 31, 2020 filing with FERC, PacifiCorp will need to evaluate interconnection documentation later in the 2020AS RFP process because some bidders may need to wait until the proposed October 15, 2020 transitional cluster study is completed to have an interconnection study.

### **PROPOSED 2020 ALL-SOURCE RFP BACKGROUND**

PacifiCorp established an action item out of PacifiCorp’s 2019 Integrated Resource Plan (IRP) to conduct an all-source RFP in 2020 (2020AS RFP). This action item is driven by the 2019 IRP preferred portfolio, which includes 2,380 MW of new proxy solar resources co-located with 595 MW of new proxy battery energy storage system (BESS) capacity and 1,989 MW of new proxy wind resources by the end of 2023.

At the time the 2019 IRP was filed, PacifiCorp assumed new wind resources would need to achieve commercial operation by the end of 2023 to be eligible for the 40 percent production tax credit (PTC). Similarly, PacifiCorp assumed new solar resources collocated with BESS resources would need to achieve commercial operation by the end of 2023 to be eligible for the 30 percent investment tax credit (ITC). After the 2019 IRP was filed, federal legislation was passed extending the PTC to allow projects that begin

construction in 2020 to receive a 60 percent PTC if placed into service by year-end 2024. Consequently, the 2020AS RFP will consider bids that can achieve commercial operation by December 31, 2024.<sup>20</sup>

In addition, PacifiCorp will accept bids from pumped storage hydro and nuclear resources requiring longer lead time to develop and construct that places the project completion beyond the required 2020AS RFP December 31, 2024 commercial operation date (COD).<sup>21</sup>

Under 2020AS RFP, PacifiCorp is seeking proposals for competitively priced resources capable of interconnecting with or delivering to PacifiCorp's transmission system in its east or west balancing authority areas (PACE and PACW, respectively), targeting the specific IRP topology and resource mix shown in **Attachment C-1 - PacifiCorp's 2020AS RFP Locational Capacity Limits**.

Projects submitted into the 2020AS RFP must have a minimum net power production capacity of greater than 20 MW(AC)<sup>22</sup> with the exceptions of qualifying facilities (QFs) under the Public Utility Regulatory Policies Act (PURPA). Per OAR 860-089-250(4), QFs are allowed to participate in the 2020AS RFP if their project's nameplate capacity is greater than their state standard avoided cost schedule.

PacifiCorp is accepting qualified proposals from bidders who currently own or have legally binding rights to develop new green-field resources that are discrete generating assets, are not located behind any load served by a utility or net-metered, and can be individually metered and remotely monitored. PacifiCorp is not seeking bids from existing operating facilities, including bids proposing modification or expansion of existing operating facilities.

PacifiCorp will consider proposals for the following transaction structures:

1. Build-transfer transaction whereby the bidder develops the project, assumes responsibility for construction and ultimately transfers the asset to PacifiCorp in accordance with the terms of a build-transfer agreement (BTA). Under this transaction structure, the bidder will be responsible for all development, design, equipment supply, construction, commissioning, and performance testing, and will be required to design and construct the resource in conformance with PacifiCorp's specifications. PacifiCorp will not accommodate build-transfer transactions that involve the ultimate transfer of a project company to PacifiCorp.<sup>23</sup>
2. Power-purchase agreement (PPA) with exclusive ownership by PacifiCorp of any and all capacity and environmental attributes associated with all energy generated with terms up to 25 years. Standalone battery storage or a BESS collocated with a renewable resource will be contracted through a separate agreement controlling the output of the battery. Collocated resource and battery storage must have agreements that are the same term length.

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<sup>20</sup> It is recognized that the extension of production tax credits will generally only benefit wind resources and the 30 percent ITC for solar and solar co-located with BESS capacity continues to sunset at the end of 2023.

<sup>21</sup> A review of PacifiCorp Transmission's interconnection queue showed only pumped storage and nuclear as the only long-lead time resources. Wind and solar or solar with a BESS that have CODs beyond 2024 will not be accepted under this criteria as they have a shorter build cycle and the ability to bid into the next RFP issued by PacifiCorp.

<sup>22</sup> All project size in the 2020AS RFP will be referenced in MW AC unless specifically noted.

<sup>23</sup> Note – In considering submittal of a BTA bid involving a solar resource or a solar resource collocated with a BESS, bidders will be advised in the 2020AS RFP that they should assume PacifiCorp, as a public utility owner of a solar resource or a solar resource collocated with a BESS eligible for the federal investment tax credit, will realize the investment tax credit over the useful life of the solar resource. Such utility normalization may disadvantage a BTA solar resource or a solar resource collocated with a BESS bid as compared to a PPA solar resource bid or a BTA wind resource bid.

PacifiCorp will accept bids from the following resource and structure types. PacifiCorp will not accept bids from existing operating facilities.

- New renewable resource under BTA or PPA.
- New renewables with collocated BESS under BTA or PPA and associated battery storage agreement.
- New non-renewable resource under a BTA or PPA.
- New standalone storage resources under a BTA or battery storage agreement. **Note: Pumped storage hydro will be allowed as BTA or PPA.**

PacifiCorp is making specific utility property and right-of-way easements available for bidders in this RFP consistent with Oregon rule 860-089-0300(3)(a) including compensation to PacifiCorp commensurate to market rate for the easement asset. Bidders will be required to provide supporting documentation demonstrating that its project location and design allows the project via its own gen-tie line to directly interconnect to an existing PacifiCorp substation at the designated point of interconnection held by certain specified PacifiCorp owned coal generation facilities.

PacifiCorp is not submitting any self-build ownership proposals (benchmark resources) in the 2020AS RFP and is not accepting any bids from any PacifiCorp affiliate.<sup>24</sup>

## **OVERVIEW OF THE BID EVALUATION AND SELECTION PROCESS**

PacifiCorp's bid evaluation and selection process is designed to identify the combination and amount of new resources that will maximize customer benefits through the selection of bids that will satisfy projected capacity and energy needs while maintaining reliability. Based on proxy resource cost assumptions used in the 2019 IRP, energy and capacity needs were best satisfied by the resource selections summarized in **Attachment C-1 - 2020AS RFP Locational Capacity Limits**. The models that PacifiCorp will use to evaluate and select the best combination and amount of bids are the same models that were used to evaluate proxy resources in PacifiCorp's 2019 IRP. PacifiCorp uses the IRP modeling tools to serve as decision support tools that can be used to guide prudent resource acquisition paths that maintain system reliability at a reasonable cost.

The bid evaluation process is designed to reflect PacifiCorp Transmission's proposed interconnection queue reform application filed with FERC on January 31, 2020 including the transition period milestones and process steps. At a high level, the 2020AS RFP evaluation process involves three phases:

1. Initial shortlist
2. Interconnection cluster study and contract development, and
3. Final shortlist

### **A. PHASE I – INITIAL SHORTLIST**

Phase I entails the acceptance of the bid, due diligence and screening to ensure bids conform with minimum requirements established in the 2020AS RFP, price and non-price scoring and ranking of the bids based on their location in relationship to the 2020 IRP topology and resource type, and advancing the lowest cost bids to the initial shortlist. During this phase of the bid evaluation process, PacifiCorp

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<sup>24</sup> Unless directed by the Commission otherwise, a PacifiCorp "affiliate" shall be limited to Berkshire Hathaway Energy Company and its subsidiaries.

will not ask for, or accept, updated pricing or updates to any other bid components. PacifiCorp will rely on the pricing and other inputs as submitted into the 2020AS RFP for each bid. However, PacifiCorp will contact bidders to confirm and clarify information presented in each proposal. The pricing model will be made available to the IE, but not to bidders or stakeholders.

## 1. Conformance to Minimum Requirements

Bids will initially be screened after receipt against minimum requirements for RFP conformance and after IE review and consultation, non-confirming bids will be notified to correct their bid within 24 hours or be removed from the RFP. In the event FERC approves the company's interconnection queue reform filing submitted January 31, 2020 (FERC Docket ER20-924), among the minimum eligibility requirements for RFP conformance will be demonstration by the bidder that its project bid conforms with the project's interconnection documentation, which could be: (a) only an interconnection request, as long as it was submitted by the interconnection customer to PacifiCorp's transmission function on or before January 31, 2020; (b) serial-queue interconnection study documentation if the bidder has the option to keep that documentation under the parameters of PacifiCorp's proposed interconnection queue reform transition process; or (c) an executed interconnection agreement.

## 2. Price and Non-Price Scoring and Ranking

Conforming bids will be evaluated and ranked with PacifiCorp's proprietary pricing models by resource type within each IRP topology location. PacifiCorp will limit the capacity in a given location and by resource type to 150% of the capacity included in the company's 2019 IRP preferred portfolio. Those targets are shown in **Attachment C-1 2020AS RFP Locational Capacity Limits** in the topology map on the right. For locations where the IRP preferred portfolio did not include any new resources in the 2023-2024 time frame, PacifiCorp will limit the total capacity by resource type to be no greater than 150% of the interconnection capacity for that location as assumed when developing the 2019 IRP.

For example, in Southern Oregon which is shown on the 2019 IRP Preferred Portfolio topology map to the left in **Attachment C-1**, 500 MW of solar and 125 MW of BESS were selected by the 2019 IRP. Bids located in Southern Oregon would be separated by resource type (*i.e.*, solar, solar with a BESS, wind, *etc.*), then ranked and selected up to a total of 750 MW for each resource type.<sup>25</sup> If PacifiCorp determines that there is a distinct change in bid scores at a level of capacity that falls short or exceeds this capacity limit, the company will coordinate with the IE to establish a limit by resource type that could either fall below or exceed the maximum total capacity for a given location.

Wyoming East – PacifiCorp eastern Wyoming region of the PACE BAA is treated differently from other topology areas because the interconnection capacity in that area has been studied extensively as part of PacifiCorp Transmission's long-term transmission planning resulting in the planned addition of Gateway South, a 500 kV high-voltage transmission line that will extend approximately 400 miles from the proposed Aeolus substation in southeastern Wyoming into the Clover substation near Mona, Utah. That expansion will create approximately 1,920 MW of interconnection capability for generation projects in this area and therefore the capacity limit will be specifically tied to 1,920 MW. Bids in the Wyoming east cluster area will trigger Gateway South to be added and account for its cost as part of the initial shortlist modeling process and later in the final shortlist modeling and selection process.

- Price Score (up to 75%). PacifiCorp will calculate the delivered revenue requirement cost of each bid, inclusive of any applicable carrying cost and net of tax credit benefits, as applicable.

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<sup>25</sup> BESS capacity will be limited to 25% of the nameplate capacity of the collocated solar capacity (*i.e.*, in Southern Oregon, 750 MW of solar would select 190 MW of BESS).

In developing revenue requirement costs, PacifiCorp will use cost data for each bid. Any internal assumptions for key financial inputs (*i.e.*, inflation, discount rates, marginal tax rates, asset lives, AFUDC rates, *etc.*) and PacifiCorp carrying costs (*i.e.*, integration costs, owner's costs, *etc.*) will be applied consistently to all bids, as applicable. PacifiCorp anticipates that it will receive bids having progressed through various stages of the currently effective serial queue interconnection study process. On one end of the spectrum, some bids are likely to have executed large generator interconnection agreements (LGIA) with PacifiCorp Transmission, while on the other end of the spectrum, other bids are likely to have only submitted an interconnection request that will not yet have been studied. To ensure there is a fair comparison among bids, while the company will be reviewing the bidder's interconnection documentation to confirm it aligns with the bidder's bid, the cost for any direct assigned and transmission network upgrades associated with the interconnection of a proposed project to PacifiCorp's transmission system will not be included in the initial shortlist price evaluation. At the conclusion of the transition cluster study phase as part of updating bid pricing, bids selected to the initial shortlist will be required to provide direct assigned and network upgrade costs either from their cluster study results, their serial-queue study documentation (if the bidder has the option to keep the documentation under the parameters of PacifiCorp's proposed interconnection queue reform process), or from their executed LGIA.

The cost of each bid will be netted against system-value curves, which will be developed and locked down with the IE in advance of receiving bids. The system-value curves will be developed from Planning and Risk (PaR) model simulations that will calculate the hourly marginal system energy value of a flat energy profile and the hourly marginal operating reserve value of a flat operating reserve profile, by location.

Bid costs net of the applicable system-value will be used to assign a price score to each bid. This will be achieved by calculating an inflation-adjusted real-levelized net cost of capacity expressed in "\$/kW" based on the capacity contribution of each bid. This value will be force ranked, with a maximum of 75 points to the evaluated bid with the highest calculated net benefit by location and resource type, a minimum of zero (0) points to the evaluated bid with the lowest calculated net benefit; and the remaining bids scored on the 0 to 75 point scale according to the relationship of their respective calculated net benefits to those of the highest and lowest bids.

- Non-Price Score (Up To 25%). The non-price analysis will gauge the maturity and readiness of the project including development, site control, permitting, equipment procurement, conformance to PPA or BTA terms and conditions, schedule, and operational characteristics and associated risks of each bid. A matrix will be used for each non-price factor and is included in **Attachment C-2 – Non-Price Scoring Matrix**.<sup>26</sup> For each non-price factor, proposals will be assigned one of three discrete scores: (1) 100% of the percentage weight; (2) 50% of the percentage weight; or (3) 0% of the percentage weight as shown in the Non-Price Scoring Matrix. Bids will be evaluated based on their ability to demonstrate the proposal is thorough, comprehensive and provides limited risk to PacifiCorp before PacifiCorp performs due diligence on any given bid. Bidders that have a demonstrated track record and bids for mature proposals will receive higher scores. The following table summarizes the basis for weighting each non-price factor.

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<sup>26</sup> OAR 860-089-400 2(b).

## NON-PRICE FACTOR WEIGHTING

Non-Price Factor	Non-Price Factor Weighting
1. Conformity to RFP Requirements	5%
2. Conformance to pro-forma power purchase agreement or BTA termsheet	10%
3. Project Readiness, Deliverability, and Operational Characteristics	10%

PacifiCorp will use the combined price and non-price results to rank bids. Based on these rankings, PacifiCorp will identify an initial pool of resources by location and resource type based on total bid score (maximum at 100%, with a maximum of 75% for price and a maximum of 25% for non-price factors). This initial pool of resources will be made available as resource alternatives for IRP modeling.<sup>27</sup>

### 3. IRP Modeling and Selection of the Initial Shortlist

Upon identification of the initial pool of bids, bid inputs will be submitted to IRP for modeling of the resources using the production cost models used in the 2019 IRP to select the optimized portfolio of resources subject to the same total capacity limits used to score and rank bids in the initial pool of resources. As noted above, PacifiCorp will limit the capacity in a given location to 150% of the capacity included in the company’s 2019 IRP preferred portfolio. For locations where the IRP preferred portfolio did not include any new resources in the 2023-2024 time frame, PacifiCorp will limit the total capacity by to be no greater than 150% of the interconnection capacity for that location as assumed when developing the 2019 IRP. Note, that the IRP modeling tools will selection among the least cost resource types by location based on bid cost and performance data.

As was done in the 2019 IRP, reliability analysis will be performed on all initial bid selections to ensure that the selected portfolio of resources can meet all hourly load and operating reserve requirements with sufficient cushion to account for other system uncertainties such as non-normal weather events. Should incremental flexible resource capacity be required to maintain system reliability through 2024, these resources will be selected from bids capable of providing incremental flex capacity.

PacifiCorp will not make any of the IRP evaluation models available to the IE, bidders, or stakeholders. However, PacifiCorp will summarize how the IRP evaluation models function for the IE, who will have full access to the inputs and outputs of all IRP models used during the evaluation process.

### 4. Initial Shortlist Notification by PacifiCorp

PacifiCorp will notify bidders that were selected to the initial shortlist in Phase I.

### 5. Bidder Notification to PacifiCorp Transmission

Bidders will then be required to notify PacifiCorp Transmission of their selection to the initial short list to demonstrate they have met the “commercial readiness” criteria (and satisfy any other requirements) established in PacifiCorp Transmission’s interconnection queue reform process. Bidders will be responsible to ensure that their bid(s) submitted to PacifiCorp in response to the

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<sup>27</sup> Note, in instances where bidders offer a bid alternative for the same resource type in the same location, only the highest scoring bid alternative for that location and resource type will be included in the initial pool of resources.

2020AS RFP, if selected to the initial shortlist, are in compliance with and represent existing interconnection service requests, study documentation, or existing contracts between Bidder and PacifiCorp Transmission. *Bidders assume the risk, and PacifiCorp will not be held liable, in the event that a bid selected to the initial shortlist in the 2020AS RFP is deemed ineligible for PacifiCorp’s transition cluster study due to deviations between the submitted project bid and the interconnection agreement, study documentation, or application associated with such project as submitted to PacifiCorp Transmission, or due to a Bidder’s failure to satisfy any other requirement of PacifiCorp’s OATT. Bidders will be required to meet all requirements of PacifiCorp Transmission’s transition cluster study process including deposits, payments, milestones and any penalties associated with withdrawals from the transition cluster process and could be subject to disqualification from the 2020AS RFP for any violation during the transition cluster study process.*

## **B. PHASE II – INTERCONNECTION CLUSTER STUDY AND CONTRACT DEVELOPMENT**

Phase II is composed of the following tasks: transition cluster study report issued by PacifiCorp Transmission, resource capacity factor verification and storage performance performed by third-party consultants for PacifiCorp, preliminary contract negotiations with the initial shortlist bidders,<sup>28</sup> and bid update by the initial shortlist.

### **1. Interconnection Cluster Study Report**

The interconnection cluster study report is expected to take approximately six months and will be performed by PacifiCorp Transmission in accordance with its proposed transition interconnection queue reform process filed at FERC on January 31, 2020.

### **2. Resource Capacity Factor Verification and Storage Performance**

PacifiCorp will engage a third-party subject matter expert to verify the capacity factor of the proposed wind and solar resource selected to the initial shortlist consistent with Oregon rule 860-089-0400 5(a). In addition, PacifiCorp will engage a third-party subject matter expert to assist in the evaluation of bids including storage specifically focused on the operating characteristics and specifications of the storage resource proposed by the bidder. This task will be done in parallel with the transition cluster study.

### **3. Contract Development**

PacifiCorp will engage the initial shortlist bidders to work through terms and conditions in the applicable pro forma agreement or term sheet for each proposal using the submitted issues list and agreement mark-up contained in their bid. All initial shortlisted bidders will be expected to complete a near-final draft contract specific to their project on the timeline established in the 2020AS RFP including any long-lead resources making the initial shortlist. Delay in completing the negotiations of a near-final draft contract may result in removal from the initial shortlist. Completing a near-final draft contract does not guarantee bidder selection to PacifiCorp’s final

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<sup>28</sup> Pursuant to OAR 860-089-0500(2) the company is required to request Commission acknowledgment of the final short list before it may begin negotiations. To achieve the proposed timeline necessary to allow commercial operation dates eligible for tax benefits, the company is considering a timeline where it commences contract negotiations prior to submission of the final shortlist to the Commission. PacifiCorp would not, however, complete negotiations until after a Commission determination on the final short list is made. The company will continue to evaluate the necessity of this timing during the development of the RFP, together with the selected IE, and submit a waiver request to the Commission from OAR 860-089-500(2), as necessary.

shortlist. Only execution of a definitive agreement between PacifiCorp and the bidder after the final shortlist selection, on terms acceptable to PacifiCorp, in its sole and absolute discretion, will constitute a winning bid proposal.

#### **4. Bid Update**

At the conclusion of the interconnection cluster study process, results of the transition cluster study will be posted to OASIS and participating parties including the initial shortlist bidders will be notified of their results. Bidders will be required to update their bid which includes the direct assigned and network upgrade costs associated with interconnection either from their cluster study results, their serial-queue study documentation, or from their executed interconnection agreement. Bidders will also be given an opportunity to update bid pricing. Best and final pricing must be provided for the same site using the same interconnection agreement, study documentation, or application associated with such project, the same or similar project equipment, and on the same development and construction timeline as originally proposed.

### **C. PHASE III – FINAL SHORTLIST**

Phase III is the selection of the final shortlist. In Phase III, the same production cost models used for the IRP and for selection of the initial shortlist in Phase I will be rerun for the initial shortlist resources with updated bid pricing and interconnection costs results from either the bidder's cluster study results, their serial-queue study documentation, or their interconnection agreement. After confirming that updated pricing meets the requirements of the 2020AS RFP, PacifiCorp will use the same proprietary models used for the Phase I initial ranking, with the bids' interconnection information, updated pricing, verified capacity factor, and storage evaluation, if applicable, to process bid costs for input into the IRP production cost models. As was done in the 2019 IRP and in Phase I, PacifiCorp will perform a reliability assessment to ensure that the selected portfolio of resources can meet all hourly load and operating reserve requirements with sufficient cushion to account for other system uncertainties such as non-normal weather events. Should incremental flexible resource capacity be required to maintain system reliability, these resources will be selected from the initial shortlist of bids that are capable of providing incremental flex capacity or remove resources to hit the targeted reliability requirements. PacifiCorp will not update the non-price portion of the bid evaluation from Phase I. Cost and risk analysis, along with any other factors not expressly included in the formal evaluation process, but required by applicable law or commission order, will be used by PacifiCorp, in consultation with the IE, to establish the final shortlist.

#### **1. Processing of Best and Final Bids**

In processing bid costs, PacifiCorp will convert any calculated revenue requirement associated with capital costs (i.e., return on investment, return of investment, and taxes, net of tax credits, as applicable) to first-year-real-levelized costs, consistent with the treatment of capital revenue requirement in PacifiCorp's IRP modeling. All other bid costs will be summarized in nominal dollars and formatted for input into to the IRP models, consistent with the treatment of non-capital revenue requirement in PacifiCorp's IRP modeling. Projected renewable resource performance data (expected hourly capacity factor information) will also be processed for input into the IRP models.

#### **2. Bid Resource Portfolio Development**

The initial shortlist with updated pricing and costs will be submitted to the IRP modeling team representing the final shortlist pool from which the IRP models will select the final short list.



However, with the cluster study results available, resource selections will be informed by interconnection costs and potential limits on interconnection capacity. PacifiCorp will use the System Optimizer (SO) model (the same model used by PacifiCorp to develop resource portfolios in the 2019 IRP) to develop a resource portfolio, tested for reliability, that contains the selection of updated initial shortlist bids providing the lowest cost, to establish the final shortlist. If, during the reliability assessment the selected portfolio of resources does not meet all hourly load and operating reserve requirements with sufficient cushion to account for other system uncertainties such as non-normal weather events, and incremental flexible resource capacity is required to maintain system reliability, PacifiCorp in consultation with the IE, may add resources from the initial shortlist of bids that are capable of providing incremental flex capacity or remove resources to hit the targeted reliability requirements. Bids will be available for selection to the resource portfolio for a range of different environmental policy and market price scenarios (policy-price scenarios).<sup>29</sup>

### **3. Stochastic Risk Analysis**

PacifiCorp will also evaluate each of the resource portfolios developed with the SO model using PaR—the same model used in PacifiCorp’s 2019 IRP to analyze stochastic resource portfolio risk. PaR captures stochastic risk in its production cost estimates, without altering the resource portfolio, by using Monte Carlo sampling of stochastic variables, which include: load, wholesale electricity and natural gas prices, hydro generation, and thermal unit outages. For purposes of the 2020AS RFP, PaR will be used to calculate the stochastic mean PVRR and the risk-adjusted PVRR for each policy-price scenario.<sup>30</sup>

### **4. Identifying Top-Performing 2020AS RFP Renewable Resource Portfolios**

PacifiCorp will summarize and evaluate the 2020AS RFP resource portfolios to identify the specific bid resources that are most consistently selected among the policy-price scenarios. Based on these data, and in consultation with the IE, PacifiCorp may select one or more 2020AS RFP resource portfolios for further scenario risk analysis.

### **5. Scenario Risk Analysis**

This step of the evaluation process will help identify whether top-performing portfolios exhibit especially poor performance under a range of future policy-price scenarios. PacifiCorp will develop new system resource portfolios around the top-performing 2020AS RFP resource portfolios and calculate a system PVRR(d) for each policy-price scenario. Similarly, the portfolios developed in the SO model will be evaluated in PaR, and PacifiCorp will calculate a stochastic mean PVRR and a risk-adjusted PVRR for each policy price-scenario.

### **6. Other Factors: Applicable Law and Statutory Requirements**

Before establishing a final shortlist, PacifiCorp may take into consideration, in consultation with the IE, other factors that are not expressly or adequately factored into the evaluation process

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<sup>29</sup> Policy-price scenarios will be conceptually consistent with those used in the 2019 IRP (i.e., alternative environmental policy assumptions among low, medium, and high price scenarios), but updated to reflect PacifiCorp’s assessment of the most current information. Policy-price scenario assumptions will be established and reviewed with the IE before updated bids with updated pricing are received and opened.

<sup>30</sup> The stochastic mean metric is the average of system net variable operating costs among 50 iterations, combined with the real-levelized capital costs and fixed costs taken from the SO model. The risk-adjusted metric adds 5% of system variable costs from the 95<sup>th</sup> percentile to the stochastic mean. The risk-adjusted metric incorporates the expected value of low-probability, high-cost outcomes.

outlined above, particularly any factor required by applicable law or Commission order to be considered.

## **7. Final Shortlist Selection**

PacifiCorp will summarize and evaluate the results of its scenario risk analysis, considering PVRR results, to identify the specific least-cost bids. Based on these data and certain other factors as described above, and in consultation with the IE, PacifiCorp may establish a final shortlist.

Selection of the final shortlist may be conditioned on the results of a restudy under PacifiCorp Transmission's transition cluster study process.

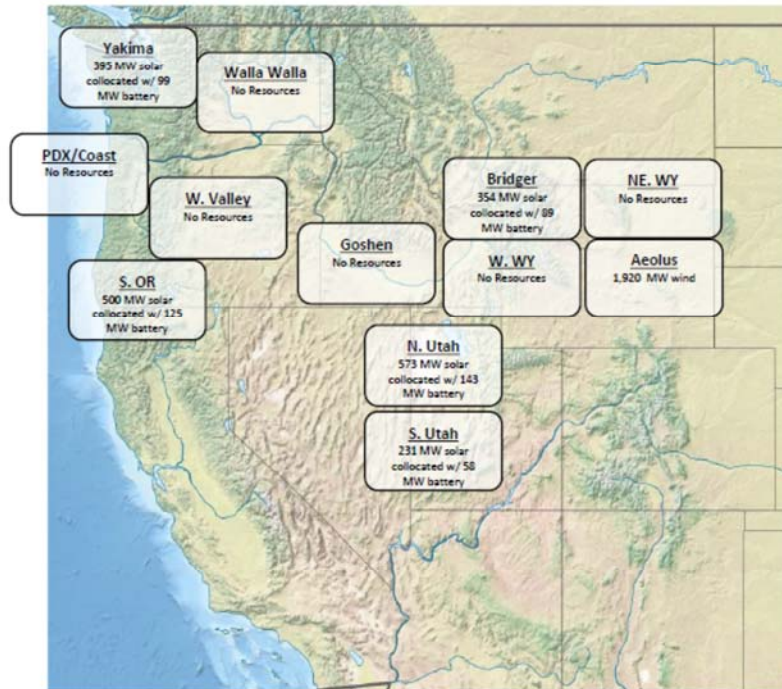
After the final shortlist is established and approved, PacifiCorp will re-engage in negotiations with the selected bidders to finalize their contract and prepare the contract for execution. Selection of a bid to the final shortlist does not constitute a winning bid. Only execution of a definitive agreement between PacifiCorp and the bidder, on terms acceptable to PacifiCorp, in its sole and absolute discretion, will constitute a winning bid proposal.

**Attachment C-1**

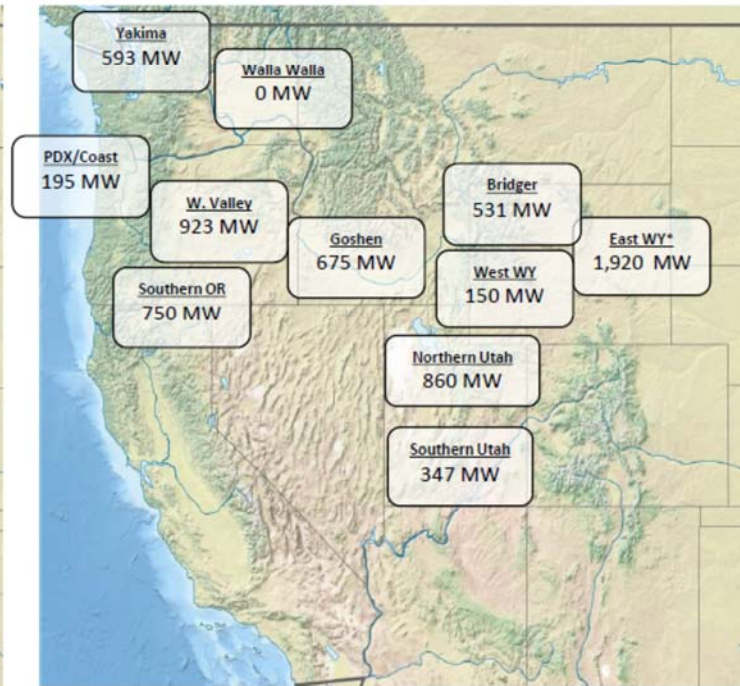
**2020AS RFP Locational Capacity Limits**

## Attachment C-1 2020AS RFP Locational Capacity Limits

**2019 IRP Preferred Portfolio Resources Online by Year-End 2023  
(Excludes Customer Preference Resources)**



**Locational Initial Shortlist Capacity Limits  
(1.5x Pref. Port. or 1.5x Assumed Interconnection Limit)**



\*Note, eastern Wyoming includes Aeolus and NE Wyoming, which combined, will be limited to 1,920 MW.

**Attachment C-2**

**Non-Price Scoring Matrix**

## Attachment C-2

### Appendix L to 2020AS RFP Non-Price Scoring Matrix

<b>Assigned Bid #:</b>				
<b>PPA or BTA</b>				
<b>Bidder</b>				
<b>Project Name</b>				
<b>County/State</b>				
<b>MW</b>				
<b>Non-Price Factor</b>	<b>Max Score</b>	<b>Bid Score</b>		
<b>1. Conformity to RFP Requirements</b>	<b>5%</b>			
Bids provided all required RFP information pursuant to RFP instructions for PPA and BTA, including accuracy of such information including the specific Appendices listed below;	Multiple documents missing = 1% Some documents are incomplete = 2% All documents complete = 3%			
<ul style="list-style-type: none"> <li>• Appendix B-2 Information required in Proposal</li> <li>• Appendix C-2 Bid Summary and Pricing Input Sheet</li> <li>• Appendix C-3 3rd Party Performance Report including site data</li> <li>• Appendix D Bidder's Credit Information</li> </ul>				
Bid in compliance with technical or operating specifications as outlined in <b>Appendix A</b> as applicable to resource type and bid structure			Major components out of compliance = 0% Some major components in compliance = 1% All major components in compliance = 2%	
<b>2. Contract Conformance</b>			<b>10%</b>	
Bidder provided Appendix E-2 PPA document redline and comments Bidder provided Appendix E-3 battery storage agreement redline and comments Bidder provided Appendix F-2 BTA term sheet redline and comments			Bid states that redline and comments will be provided upon selection = 0% Comments provided / No redline = 5% Comments and redline provided = 10%	
<b>3. Project Readiness and Deliverability</b>	<b>10%</b>			
Bidder's development and construction experience related to large energy and/or storage projects including O&M plan and financing plan.	No operating projects = 0% < 300 MW operating projects = 1% >300 MW operating projects = 2%			
Bids demonstrated site control consistent with PacifiCorp Transmission's Site Control definition.	< 50% under lease or purchase option = 0% Lease option on full site = 1% Lease or purchase for full site = 2%			
Bid provided sufficient detail, including schedule(s) and documentation, to demonstrate the ability of meeting all of the project's environmental compliance, studies, permits, and equipment procurement needs such that the December 31, 2024 COD is met.	Major studies & permits not started = 0% 50% of major studies & permits complete = 1% 100% of major studies & permits complete = 2%			
Bid included documentation that projects qualify for and would receive the full or partial value of the federal tax credit as interpreted by applicable guidelines and rules of the Internal Revenue Service at commercial operation.	No documentation = 0% Qualification through construction = 1% Documentation of safe harbor equipment = 2%			
<b>TOTAL</b>	<b>25%</b>			

**Attachment D**

**BIDDER PRICING PROPOSAL**

# Attachment D

## BIDDER PRICING PROPOSAL

### Oregon Independent Evaluator for PacifiCorp's 2020AS Request for Proposal

Company: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Contact: \_\_\_\_\_

Phone: \_\_\_\_\_

Email: \_\_\_\_\_

*Pricing for this RFP shall be defined into five (5) areas. Bidder shall provide fixed pricing by area. Pricing shall account for 40% of overall score for each proposal.*

#### ALL PRICING SHALL BE FIXED AND PROPOSED IN TOTAL DOLLARS

SCOPE OF WORK	
<b>Area One (1): RFP Design</b>	
A.1 <u>IE Assessment of PacifiCorp's RFP Design</u>	
A.1.a <i>Review of initial draft RFP and stakeholder comments</i>	
A.1.b <i>Assessment of final draft RFP filed with Commission</i>	
A.1.c <i>Joint discussion with Utah's independent evaluator</i>	
<b>Area Two (2): Monitoring and Validation of RFP Process</b>	
B.6 <u>Monitor all aspects of solicitation process</u>	
<i>Monitor the solicitation process and discussions with bidders through the final shortlist determination and any acknowledgement of the final shortlist.</i>	
<u>Audit and Validation</u>	
B.4, 7, 10, 12 <i>Audit and validation of RFP screening and evaluation process including inputs, assumptions and modeling.</i>	
B.8 <u>Verification of RFP Initial Shortlist</u>	
B.8.a <i>Verify that price score calculated appropriately for product, technology and methodology.</i>	
B.8.b <i>Verify that non-price score calculated appropriately per PacifiCorp's IRP Action Plan and bidder can reasonably self-calculate its non-price score.</i>	
B.9 <u>Verification of RFP Final Shortlist</u>	
B.9.a <i>Verify the impact of PacifiCorp Transmission cluster-study on Final Shortlist selection</i>	
B.9.b <i>Verify modeling results of Final Shortlist modeling on overall system costs and risks</i>	
B.9.c <i>Verify that non-price score calculated appropriately per PacifiCorp's IRP Action Plan and that individual bidders can reasonably self-calculate its own non-price score.</i>	
<b>Area Three (3): PacifiCorp RFP Bid Scoring</b>	
<i>Pricing to be calculated based on quantity of bids received by PacifiCorp.</i>	



- B.6.a *Opening and cataloging of market bids including bid fees*
- B.6.b *Bidder eligibility screening*
- B.6.c *Participate in all calls/communication between bidder and PacifiCorp*
- B.11 *Independently score market bids and benchmark resource bids, if any*
- B.12 *Evaluation of risks and advantages of utility owned resources, if any*
- B.13 *Compare IE and PacifiCorp scoring*

Quantity of bids

*Provide fixed pricing for each quantity of bids. Pricing associated with analysis of multiple bids from the same project should be appropriately recognized.*

One to Twenty (1 – 20)	
Twenty-One to Forty (21 – 40)	
Forty-One to Sixty (41 – 60)	
Sixty-One to Eighty (61 – 80)	
Eighty-One to One hundred (81 – 100)	

**Area Four (4): Reporting and Presentations**

A.2 Reports to be prepared and provided to Commission

- A.2.a *Bid Scoring Report*
- A.2.b *Final Short List Sensitivity Analysis Report*
- A.2.c *Closing Report*

Communication and Presentations

- B.1, 2, 3, 5, 14 *Participate in activities, confer with Commission Staff and PacifiCorp, and attend Commission meetings and present information as required.*

**Area Five (5): Additional tasks**

*A separate cost proposal must be provided for the following conditional tasks.*

B.14 Participate in Commission proceeding on acknowledgment of Final Shortlist	
B.15 Participate in additional meetings with parties (cost per meeting)	

**Attachment E**

**DRAFT COPY  
PACIFICORP PROFESSIONAL SERVICES CONTRACT**

**PROFESSIONAL SERVICES CONTRACT**

**BETWEEN  
PACIFICORP  
AND  
FOR**

**THIS DRAFT DOES NOT CONSTITUTE A BINDING OFFER AND SHALL NOT FORM THE BASIS FOR AN AGREEMENT BY ESTOPPEL OR OTHERWISE. PACIFICORP RESERVES THE RIGHT, IN ITS SOLE DISCRETION, TO MODIFY THIS DRAFT AT ANY TIME. ANY ACTIONS TAKEN BY A PARTY IN RELIANCE ON THE TERMS SET FORTH IN THIS DRAFT OR ON STATEMENTS MADE DURING NEGOTIATIONS PURSUANT TO THIS DRAFT SHALL BE AT THAT PARTY’S OWN RISK. UNTIL PACIFICORP HAS COMPLETED ITS DUE DILIGENCE AND THIS AGREEMENT IS NEGOTIATED, APPROVED BY MANAGEMENT, EXECUTED AND DELIVERED, NO PARTY SHALL HAVE ANY LEGAL OBLIGATIONS, EXPRESSED OR IMPLIED, OR ARISING IN ANY OTHER MANNER UNDER THIS DRAFT OR IN THE COURSE OF ANY NEGOTIATIONS.**

**TABLE OF CONTENTS**

	<u>PAGE</u>
ARTICLE 1. DEFINITIONS.....	3
ARTICLE 2. DESCRIPTION OF WORK .....	4
ARTICLE 3. PERIOD OF PERFORMANCE.....	4
ARTICLE 4. CONSIDERATION AND PAYMENT .....	5
ARTICLE 5. TAXES .....	5
ARTICLE 6. TRAVEL.....	5
ARTICLE 7. ACCOUNTING AND AUDITING .....	5
ARTICLE 8. CREDIT REQUIREMENTS .....	5
ARTICLE 9. SECURITY .....	6
ARTICLE 10. WITHHOLDING PAYMENT .....	6
ARTICLE 11. DESIGNATED REPRESENTATIVES AND NOTICES .....	6
ARTICLE 12. EXAMINATION OF WORK AND PROGRESS REPORTS .....	7
ARTICLE 13. PROFESSIONAL RESPONSIBILITY .....	8
ARTICLE 14. CHANGES.....	8
ARTICLE 15. INSURANCE.....	8
ARTICLE 16. INDEMNIFICATION.....	10
ARTICLE 17. CHANGES IN PERSONNEL .....	10
ARTICLE 18. CONSULTANT’S PERSONNEL; DRUGS, ALCOHOL AND FIREARMS .....	10
ARTICLE 19. ACCESS TO COMPANY’S FACILITIES .....	10
ARTICLE 20. SUBSTANCE ABUSE; DRUG AND ALCOHOL POLICY .....	12
ARTICLE 21. DEPARTMENT OF TRANSPORTATION .....	12
ARTICLE 22. BUSINESS ETHICS.....	12
ARTICLE 23. REVIEW OF DELIVERABLES .....	12
ARTICLE 24. SAFETY AND SITE REGULATIONS.....	12
ARTICLE 25. PROGRESS MEETINGS .....	13
ARTICLE 26. COOPERATION WITH OTHERS .....	13
ARTICLE 27. LIENS .....	13

ARTICLE 28. CONFLICTS, ERRORS, OMISSIONS, OR DISCREPANCIES IN CONTRACT DOCUMENTS ..13

ARTICLE 29. CLAIM NOTICE AND RESOLUTION PROCEDURE .....13

ARTICLE 30. SUSPENSION OF WORK .....14

ARTICLE 31. TERMINATION FOR CONVENIENCE.....14

ARTICLE 32. TERMINATION FOR CAUSE .....14

ARTICLE 33. DELAYS.....15

ARTICLE 34. COMPLIANCE WITH LAWS .....15

ARTICLE 35. INDEPENDENT CONTRACTOR.....16

ARTICLE 36. RELEASE OF INFORMATION; ADVERTISING AND PROMOTION .....16

ARTICLE 37. CONFIDENTIAL INFORMATION; NONDISCLOSURE .....16

ARTICLE 38. OWNERSHIP OF DESIGNS, DRAWINGS AND WORK PRODUCT .....17

ARTICLE 39. PATENT AND COPYRIGHT INDEMNITY .....17

ARTICLE 40. CYBER SECURITY.....17

ARTICLE 41. ASSIGNMENT.....20

ARTICLE 42. SUBCONTRACTS .....20

ARTICLE 43. NON-EXCLUSIVE RIGHTS .....20

ARTICLE 44. NONWAIVER.....20

ARTICLE 45. SEVERABILITY.....20

ARTICLE 46. APPLICABLE LAW AND VENUE .....20

ARTICLE 47. ENTIRE AGREEMENT; DOCUMENTS INCORPORATED BY REFERENCE .....21

ARTICLE 48. EXECUTION AND EFFECTIVE DATE .....22

EXHIBITS

EXHIBIT A, SCOPE OF WORK

APPENDIX 1: CONTRACTOR VENDOR INFORMATION FORM

EXHIBIT B, PRICING SCHEDULE

EXHIBIT C, LETTER OF CREDIT REQUIREMENTS

EXHIBIT D, FORM OF RELEASE/PURCHASE ORDER

EXHIBIT E, STATUTORY FORM OF LIEN AND CLAIM RELEASE FOR CALIFORNIA WORK

EXHIBIT F, CONTRACTOR HEALTH, SAFETY AND ENVIRONMENTAL

EXHIBIT G, EXPENSE GUIDELINES

EXHIBIT H, DIVERSITY SUBCONTRACTOR SPEND REPORT

**PROFESSIONAL SERVICES CONTRACT**

**BETWEEN**  
**PACIFICORP**  
**AND**  
**FOR**

**PARTIES**

The Parties to this Professional Services Contract (“Contract”) are **PACIFICORP** (hereinafter “Company”), whose address is 825 NE Multnomah Street, Portland, Oregon 97232, and \_\_\_\_\_ (hereinafter “Consultant”), whose address is \_\_\_\_\_. Company and Consultant are hereinafter sometimes collectively referred to as “Parties” and individually as a “Party,” as the context may require.

**ARTICLE 1. DEFINITIONS**

**BES Cyber System Information (BCSI)** shall mean information concerning CIPS Covered Assets that: (i) relates to the production, generation or transmission of energy; (ii) could be useful to a person planning an attack on critical infrastructure; and (iii) provides strategic information beyond the geographic location of the critical asset, and which is identified as BCSI by Company.

**CIPS Covered Assets** shall mean any assets identified by Company as “BES assets,” “BES cyber assets,” “BES cyber systems,” “protected cyber assets,” “electronic access control or monitoring systems,” “electronic access points,” or, “physical access control systems,” as those terms are defined in the North American Electric Reliability Corporation (NERC) Glossary of Terms. “BES” refers to the “Bulk Electric System” as defined by NERC.

**Company’s Facilities** shall mean any facilities owned, operated or otherwise controlled by Company which require Company authorization to obtain access.

**Confidential Information** shall mean: (i) proprietary information of Company; (ii) information marked or designated by Company as confidential; (iii) BES Cyber System Information of Company; (iv) information, whether or not in written form and whether or not designated as confidential, which is known to Consultant as being treated by Company as confidential; (v) information provided to Company that Company is obligated to keep confidential (including but not limited to information that identifies an individual or customer of Company, such as customer account numbers, customer addresses, customer energy usage information, credit or bank account numbers, social security numbers, passport or driver’s license numbers, whether or not such information is publicly available); and (vi) information developed by Consultant in connection with the performance of this Contract.

**Cyber Assets** shall mean programmable electronic devices, including the hardware, software, and data in those devices.

**Deliverables** shall mean those items to be developed and delivered by Consultant as set forth in the Scope of Work.

**E-Verify** shall mean the web-based system that allows enrolled employers to confirm the eligibility of their employees to work in the United States. E-Verify employers verify the identity and employment eligibility of newly hired employees by electronically matching information provided by employees on the Form I-9, Employment Eligibility Verification, against records available to the Social Security Administration (SSA) and the Department of Homeland Security (DHS).

**Force Majeure Event** shall mean a delay caused by any national or general strikes (but excluding strikes relating solely to the work force of Company, Consultant or a Subcontractor), fires, riots, acts of God, acts of the public enemy, floods, acts of terrorism, unavoidable transportation accidents or embargoes, or other events which are: (i) not reasonably foreseeable as of the date the Contract was executed; and (ii) attributable to a cause beyond the control and without the fault or negligence of the Party incurring such delay.

**Material Adverse Change** or **MAC** shall mean, with respect to Consultant, if Consultant, in the reasonable opinion of Company, has experienced a material adverse change in Consultant’s financial condition or Consultant’s ability to

fulfill its obligations under this Contract, including, but not limited to, any such change that results in its inability to satisfy the CREDIT REQUIREMENTS article or ARTICLE 9. SECURITY article, including any event or circumstance that would give Company the right to terminate for cause pursuant to the TERMINATION FOR CAUSE article.

**Net Replacement Costs** shall mean the “cost to cover” remedy available to Company in the event of a default by Consultant under this Contract. The Net Replacement Costs shall be: (i) the incremental costs incurred by Company to complete the Work itself or through use of a replacement consultant; plus (ii) a sum for additional managerial, administrative, and other reasonable costs Company incurs as a result of Consultant’s default.

**Notice** shall mean a formal written communication which, pursuant to the Contract, one Party must deliver to the other in order to invoke a Contract right set forth herein.

**Personnel** shall mean the employees of Consultant or any of its agents, Subcontractors, or independent contractors who are employed to perform Work under this Contract.

**Scope of Work** shall be detailed in this Contract, including all exhibits hereto and all standards, specifications, criteria and other requirements which are incorporated by reference.

**Security Breach** shall mean any act or omission that compromises either the security, confidentiality, or integrity of Company’s Confidential Information, Data, systems and facilities or Company’s physical, technical, administrative or organizational safeguards and controls relating to the protection of Company’s Confidential Information, Data, systems, and facilities.

**Security Incident** shall mean any circumstance when (i) Consultant knows or reasonably believes that the confidentiality, integrity, or availability of any Company Information has been adversely impacted, including but not limited to, incidents where Company Information has been damaged, lost, corrupted, destroyed, or accessed, acquired, modified, used, or obtained by any unauthorized person, by any person in an unauthorized manner, or for an unauthorized purpose; (ii) Consultant knows or reasonably believes that an act or omission has adversely impacted the cybersecurity of the products or services provided to Company by Consultant or the physical, technical, administrative, or organizational safeguards protecting Consultant’s systems or Company’s systems holding Company Information; or (iii) Consultant receives any complaint, notice, or communication which relates directly or indirectly to (A) Consultant’s handling of Company Information or Consultant’s compliance with the data safeguards in this Agreement or applicable law in connection with Company Information or (B) the cybersecurity of the products or services provided to Company by Consultant.

**Sensitive Personnel** shall mean all Personnel with authorized unescorted physical access or cyber access to Company’s CIPS Covered Assets.

**Service(s)** shall mean any labor, skill, or advice provided to Company pursuant to this Contract.

**Subcontractor** shall mean any entity or person (including subcontractors at any tier) having an agreement with Consultant or any other Subcontractor to perform a portion of Consultant’s obligations under this Contract.

**Unescorted Personnel** shall mean all Personnel with authorized unescorted physical access to Company’s Facilities.

**Work** shall mean all obligations, duties, requirements, and responsibilities for the successful completion of the Contract by Consultant, including furnishing of all Services, Deliverables and incidental materials and equipment in accordance with the terms and conditions set forth in the Contract.

**Workers’ Compensation Laws** shall mean the statutory requirements of the state and/or federal regulations (e.g., FELA, USL&H, Jones Act) where the Work is to be performed.

**Work Site** shall mean the location or locations on Company’s premises where the Work is to be performed.

## **ARTICLE 2. DESCRIPTION OF WORK**

Consultant shall perform the Work in accordance with the Scope of Work.

Except as otherwise provided in this Contract, Consultant shall be solely responsible for the means, methods, and procedures of performing the Work.

**ARTICLE 3. PERIOD OF PERFORMANCE**

Time is of the essence. Consultant shall commence performance upon execution of this Contract by Company and shall complete the Work not later than \_\_\_\_\_. Unless earlier terminated as provided herein, this Contract shall continue in effect until final completion of all Work set forth herein; provided, however, that all warranties, indemnities, insurance requirements, confidentiality obligations, or other obligations which by their own terms are intended to survive the completion of the Work shall continue in full force and effect after such date.

**ARTICLE 4. CONSIDERATION AND PAYMENT**

As full consideration for the satisfactory performance of Consultant's obligations under this Contract, Company will pay Consultant in accordance with Exhibit B.

Consultant shall invoice Company on a monthly basis, and shall submit each invoice to the Company designated representative. All invoices shall include each employee's name and skill classification responsible for Work under said invoice, hours worked on the project (billable hours), hourly rate, and a subtotal cost by skill classification. Consultant shall not bill Company for a higher skill classification than is required for the Work. Consultant shall furnish reasonable backup detail supporting each invoice including, without limitation, receipts supporting expenses that are reimbursed pursuant to TRAVEL article. Consultant shall identify and clearly set forth on the invoice any discount for early payment.

Company will pay all undisputed invoice amounts within sixty (60) calendar days of receipt of a proper invoice and Company's acceptance of the Work. Payment shall be contingent upon Consultant's satisfactory compliance with the invoicing requirements.

Company may offset any such payment to reflect amounts owing from Consultant to Company or its subsidiaries pursuant to this Contract. In addition, Company may withhold all payments otherwise due Consultant until such time as Consultant has provided any Default Security required by this Contract.

Upon request by Company, Consultant shall also provide lien and claim releases executed by Consultant, its Subcontractors and their suppliers through the date of each invoice submitted.

**ARTICLE 5. TAXES**

The consideration to be paid under the Contract includes all taxes arising out of Consultant's performance hereunder, including without limitation state and local sales and use taxes, value-added taxes, import duties, payroll taxes, income taxes and other taxes relating to the performance of the Work.

**ARTICLE 6. TRAVEL**

If required for the Work, pre-approved expenses for travel and related expenses will be reimbursed at Consultant's cost to the extent that such expenses are supported by original receipts or invoices and are in accordance with Company's travel policy attached hereto as Exhibit G. Such expenses will be invoiced as separate line items on any applicable invoice.

**ARTICLE 7. ACCOUNTING AND AUDITING**

Consultant shall keep accurate and complete accounting records in support of any cost-based billings and claims to Company in accordance with generally accepted accounting principles. Company, or its audit representatives, shall have the right at any reasonable time or times to examine, audit, and copy the records, vouchers, and other source documents which relate to any claim for compensation other than pricing elements which are fixed in amount by this Contract. Such documents shall be available for examination, audit and reproduction for three (3) years after completion or termination of this Contract.

Consultant shall assist Company with preparing necessary audit material and will allow Company to review any work papers prepared by independent auditors as allowed by professional standards.

Audit findings by Company's representative will be considered to be final and conclusive for the period audited. Any over collections shall be returned to Company within thirty (30) calendar days from date of Notice of overcharge.

**ARTICLE 8. CREDIT REQUIREMENTS**

Consultant shall meet the requirements of either clause (i) or clause (ii) below: **(i)** Consultant maintains a senior unsecured debt rating from Standard & Poor's of BBB- or better; or **(ii)** if Consultant does not maintain a

satisfactory debt rating, Consultant meets ALL of the following credit standards: a) tangible net worth ten (10) times the projected maximum liability of Consultant under this Contract; b) no change in the condition of its earnings, net worth, or working capital over the last twenty-four (24) months, which would reasonably be anticipated to impair Consultant's ability to meet its obligations under this Contract; and c) Consultant is not in default under any of its other agreements and is current on all of its financial obligations.

If requested by Company, Consultant shall within thirty (30) calendar days provide Company with copies of its most recent annual and quarterly financial statements prepared in accordance with generally accepted accounting principles.

#### **ARTICLE 9. SECURITY**

In the event Consultant is unable to satisfy the credit requirements set forth in the CREDIT REQUIREMENTS article at any time during the performance of the Work, or if Consultant experiences a Material Adverse Change at any time during such performance, then Consultant shall provide Company with security against defaults by Consultant under this Contract in such form and amount as may be reasonably required by Company ("Default Security"), and pursuant to such additional agreements or instruments as may be reasonably required by Company, including but not limited to letters of credit, third party guaranties, escrow accounts, labor and material payment bonds and/or performance bonds. Company may at any time, at its own discretion or pursuant to a request by Consultant, recalculate the amount of Default Security required pursuant to this Article, in which case Company shall increase or decrease the existing amount of Default Security, as appropriate. At no time shall the amount of Default Security to which Company is entitled pursuant to this Article be less than Company's Net Replacement Costs.

The terms of any letter of credit required by Company shall conform to the attached Exhibit C, as well as the requirements of this Contract and be issued by a bank acceptable to Company. The letter of credit shall provide for payment to Company of the letter of credit stated amount if Consultant defaults under the terms of this Contract. Company shall have the right to call the entire amount of the letter of credit if Consultant has not renewed the letter of credit thirty (30) calendar days prior to its expiration.

Consultant's expenses of complying with additional Default Security obligations as set forth in this Article shall be borne by Consultant.

#### **ARTICLE 10. WITHHOLDING PAYMENT**

Company may, without limiting any other rights or remedies Company may have, withhold from payments amounts which reflect the reasonable cost to repair or replace non-conforming or defective Work or the value of any claim which Company has against Consultant under the Contract. Company may also retain from any payment sufficient funds to discharge any delinquent accounts of Consultant for which liens on Company's property have been or can be filed, and Company may at any time pay therefrom for Consultant's account such amounts as are, in the reasonable opinion of Company, due thereon, including any sums due under any federal or state law.

#### **ARTICLE 11. DESIGNATED REPRESENTATIVES AND NOTICES**

Prior to the commencement of the Work, each Party shall designate a representative authorized to act on its respective behalf and shall advise the other Party in writing of the name, address and telephone number of such designated representative, and shall inform the other Party of any subsequent change in such designation. All communications relating to the day-to-day activities under this Contract shall be exchanged between such designated representatives through any agreed form of communication.

Any formal Notice required to be delivered in writing under the terms of this Contract shall be delivered to the representative of the other Party as designated below. All formal written Notices shall be: (i) hand delivered; (ii) deposited in the mail, properly stamped with the required postage; (iii) sent via registered or certified mail; or (iv) sent via recognized overnight courier service. The Parties' addresses for purposes of Notice shall be as set forth below:



If to Company: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If to Consultant: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attention:: \_\_\_\_\_  
Email: \_\_\_\_\_  
Telephone: \_\_\_\_\_

Attention: \_\_\_\_\_  
Email: \_\_\_\_\_  
Telephone: \_\_\_\_\_

Either Party may change the name or address of the designated recipient of Notices by delivery of a Notice of such change as provided for in this Article.

Requested changes to Consultant’s banking information must be independently verified with Consultant and may take up to 60 days to process. Company shall continue to use Consultant’s previous banking information during the verification period unless an exception is approved by Company’s Chief Financial Officer or designee. Company shall not be liable for late fees or interest on any late or missed payments due to Consultant’s requested changes that could not be reasonably verified by Company. Changes to Consultant information will be confirmed by Company with the following Consultant staff:

Consultant Treasurer:

Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
Telephone: \_\_\_\_\_  
Consultant Website: \_\_\_\_\_

Consultant Senior Manager:

Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
Telephone: \_\_\_\_\_

Consultant Senior Manager:

Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
Telephone: \_\_\_\_\_

**ARTICLE 12. EXAMINATION OF WORK AND PROGRESS REPORTS**

Consultant shall submit periodic progress reports as requested by Company. Company, its agents or representatives may visit Consultant’s office at any reasonable time to determine the status of ongoing Work required by this Contract.

All Work will be subject to examination at any reasonable time or times by Company, which shall have the right to reject unsatisfactory Work. Neither examination of Work nor the lack of same nor acceptance of the Work by Company nor payment therefor shall relieve Consultant from any of its obligations under this Contract.

**ARTICLE 13. PROFESSIONAL RESPONSIBILITY**

Consultant shall perform the Work in accordance with the Scope of Work and using the standards of care, skill, and diligence normally provided by a professional in the performance of similar Services, and shall comply with all laws, codes and standards applicable to the Work.

In the event of Consultant's failure to do so, Consultant shall, upon Notice by Company, promptly reperform the Work and correct the defect at Consultant's sole cost. Consultant's obligation to correct and reperform its Work shall be in addition to, and not in lieu of, any other right that Company may have.

**ARTICLE 14. CHANGES**

Company may at any time in writing direct changes and/or additions within the general scope of this Contract or direct the omission of or variation in Work. If any such direction results in a material change in the amount or character of the Work, an equitable adjustment in the Contract price and/or other such provisions of this Contract as may be affected shall be made and this Contract shall be modified in writing accordingly. Any claim by Consultant for an adjustment under this Article shall be processed in accordance with the provisions of the CLAIM NOTICE AND RESOLUTION PROCEDURE article.

No change shall be binding upon Company until a change order is executed by an authorized representative of Company which expressly states that it constitutes a change order to this Contract. The issuance of information, advice, approvals, or instructions by anyone other than the authorized Company representative shall not constitute an authorized change order pursuant to this Article.

**ARTICLE 15. INSURANCE**

Without limiting any liabilities or any other obligations of Consultant, Consultant shall, prior to commencing Work, secure and continuously carry with insurers having an A.M. Best Insurance Reports rating of A-VII or better such insurance as will protect Consultant from liability and claims for injuries and damages which may arise out of or result from Consultant's operations under the Contract and for which Consultant may be legally liable, whether such operations are by Consultant or a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. Consultant shall insure the risks associated with the Work and this Contract with minimum coverages and limits as set forth below:

Workers' Compensation. Consultant shall comply with all applicable workers' compensation laws and shall furnish proof thereof satisfactory to Company prior to commencing Work. If Work is to be performed in Washington or Wyoming, Consultant will participate in the appropriate state fund(s) to cover all eligible employees and provide a stop gap (employer's liability) endorsement. Coverage should also provide applicable federal regulations (including, without limitation, FELA, USL&H and the Jones Act).

Employers' Liability. Consultant shall maintain employers' liability insurance with limits not less than \$1,000,000 each accident, \$1,000,000 disease each employee, and \$1,000,000 disease policy limit.

Commercial General Liability. Consultant shall maintain commercial general liability insurance on the most recently approved ISO policy form, or its equivalent, written on an occurrence basis, with limits not less than \$1,000,000 per occurrence/\$2,000,000 general aggregate (on a per location and/or per job basis) and shall include the following coverages:

- a. Premises and operations coverage
- b. Independent contractor's coverage
- c. Contractual liability
- d. Products and completed operations coverage, maintained for at least **2 years** for post-completion losses
- e. Broad form property damage liability
- f. Personal and advertising injury liability, with the contractual exclusion removed
- g. Sudden and accidental pollution liability, as applicable

Business Automobile Liability. Consultant shall maintain business automobile liability insurance on the most recently approved ISO policy form, or its equivalent, with a minimum single limit of \$1,000,000 each accident for bodily injury and property damage including sudden and accidental pollution liability, with respect to Consultant's vehicles whether owned, hired or non-owned, assigned to or used in the performance of the Work.

Network Security & Privacy Liability. If the Work or Services under the Contract involves the rendering of IT services including, but not limited to: software, software or hardware or systems development or consulting services; internet/application services (e.g., web hosting); providing content; connections to systems, technology or network(s); or if Consultant in any way collects, obtains, maintains or in any way accesses or uses Confidential Information, then Consultant, and its Subcontractors shall maintain Network Security & Privacy Liability coverage, including Professional Errors & Omissions, throughout the term of this Contract and for a period of two (2) years thereafter, with a minimum required limit of \$5,000,000 Each Claim.

Professional Liability. Consultant shall maintain professional liability insurance covering damages arising out of negligent acts, errors, or omissions committed by Consultant in the performance of this Contract, with a liability limit of not less than \$1,000,000 each claim. Consultant shall maintain this policy for a minimum of two (2) years after completion of the Work or shall arrange for a two (2) year extended discovery (tail) provision if the policy is not renewed. The intent of this policy is to provide coverage for claims arising out of the performance of Work or Services under this Contract and caused by any error, omission for which the Consultant is held liable.

Umbrella or Excess Liability. Consultant shall maintain umbrella or excess liability insurance with a minimum limit of \$5,000,000 each occurrence/aggregate where applicable on a following form basis to be excess of the insurance coverage and limits required in employers' liability insurance, commercial general liability insurance and business automobile liability insurance above. Consultant shall provide Notice to Company, if at any time the full umbrella limit required under this Contract is not available, and will purchase additional limits, if requested by Company.

Company does not represent that the insurance coverages specified herein (whether in scope of coverage or amounts of coverage) are adequate to protect the obligations of Consultant, and Consultant shall be solely responsible for any deficiencies thereof.

Except for workers' compensation and professional liability insurance, the policies required herein shall include provisions or endorsements naming Company, its parent, divisions, affiliates, subsidiary companies, co-lessees, co-venturers, officers, directors, agents, employees, servants and insurers as additional insureds or loss payees, as applicable to specific insurance coverage. The commercial general liability additional insured endorsement shall be ISO Form CG 20 10 or its equivalent.

To the extent of Consultant's negligent acts or omissions, all policies required by this Contract shall include: (i) provisions that such insurance is primary insurance with respect to the interests of Company and that any other insurance maintained by Company (including self-insurance) is excess and not contributory insurance with the insurance required hereunder; and (ii) provisions that the policy contain a cross liability or severability of interest clause or endorsement in the commercial general liability and automobile liability coverage. Unless prohibited by applicable law, all required insurance policies (except professional liability) shall contain provisions that the insurer will have no right of recovery or subrogation against Company, its parent, divisions, affiliates, subsidiary companies, co-lessees or co-venturers, agents, directors, officers, employees, servants, and insurers, it being the intention of the Parties that the insurance as effected shall protect all of the above-referenced entities evidenced by waiver of subrogation wording.

A certificate of insurance shall be furnished to Company confirming the issuance of such insurance prior to commencement of Work by Consultant. Should a loss arise during the term of the Contract that may give rise to a claim against Consultant and/or Company as an additional insured, Consultant shall deliver to Company (or cause to be delivered to Company) certified copies of such insurance policies. Consultant shall not cancel or reduce limits of liability without (i) ten (10) calendar days prior written Notice to Company if canceled for nonpayment of premium; or (ii) thirty (30) calendar days prior written Notice to Company if canceled for any other reason. Lack of notification shall be considered a material breach of this Contract.

Consultant shall require Subcontractors who perform Work at the Work Site to carry liability insurance (auto, commercial general liability and excess) and workers' compensation/employer's liability insurance commensurate with their respective scopes of work. Consultant shall remain responsible for any claims, lawsuits, losses and expenses included defense costs that exceed any of its Subcontractors' insurance limits or for uninsured claims or losses.

**ARTICLE 16. INDEMNIFICATION**

Consultant specifically and expressly agrees to indemnify, defend, and hold harmless Company and its officers, directors, employees and agents (hereinafter collectively "Indemnitees") against and from any and all claims, demands, suits, losses, costs and damages of every kind and description, including attorneys' fees and/or litigation expenses, brought or made against or incurred by any of the Indemnitees resulting from or arising out of the acts, errors or omissions of Consultant, its employees, agents, representatives or Subcontractors of any tier, their employees, agents or representatives in the performance or nonperformance of Consultant's obligations under this Contract or in any way related to this Contract. The indemnity obligations under this Article shall include without limitation:

- a. Loss of or damage to any property of Company, Consultant or any third party;
- b. Bodily injury to, or death of any person(s), including without limitation employees of Company, or of Consultant or its Subcontractors of any tier; and
- c. Claims arising out of workers' compensation, unemployment compensation, or similar such laws or obligations applicable to employees of Consultant or its Subcontractors of any tier.

Consultant's indemnity obligations owing to Indemnitees under this Article are not limited by any applicable insurance coverage identified in ARTICLE 15. INSURANCE article. Consultant's indemnity obligation under this Article shall not extend to any liability caused by the sole negligence of any of the Indemnitees.

For Work performed in the States of Oregon and Washington, Consultant's indemnity obligations under this Article shall extend only to liability for damage arising out of death or bodily injury to persons or damage to property to the extent that the death or bodily injury to persons or damage to property arises out of the fault of Consultant, or the fault of Consultant's agents, representatives or Subcontractors.

To the extent applicable, Consultant specifically and expressly waives any immunity under either Industrial Insurance, Title 51, RCW, or Workers' Compensation Law, Chapter 656, ORS, and acknowledges that this waiver was mutually negotiated by the Parties herein.

The invalidity, in whole or in part, of any of the foregoing paragraphs will not affect the remainder of such paragraph or any other paragraphs in this Article.

**ARTICLE 17. CHANGES IN PERSONNEL**

Prior to: (i) changing or replacing any "key" Personnel, as identified in this Contract or in Consultant's proposal for the Work; or (ii) changing any classification, grade or rate of any Personnel working on the Contract, Consultant shall notify Company of the proposed replacement/change before executing such replacement/change, and obtain Company's prior written approval to such replacement/change. Any replacement Personnel shall have the capabilities equivalent to or better than the person replaced. If Consultant replaces or changes the classification, grade or rate of any person for performance of the Work described in the Contract, without the express approval of Company, then Consultant shall bear all costs associated with any and all such replacements and changes, and said costs shall not be reimbursable from Company.

**ARTICLE 18. CONSULTANT'S PERSONNEL; DRUGS, ALCOHOL AND FIREARMS**

Consultant shall employ in the performance of the Work only persons qualified for the same. Consultant shall at all times enforce strict discipline and good order among its employees and the employees of any Subcontractor of any tier. Consultant shall not permit or allow the introduction or use of any firearms, illegal drugs or intoxicating liquor upon the Work Site under this Contract, or upon any of the grounds occupied, controlled, or used by Consultant in the performance of the Work. Consultant shall immediately remove from the Work, whenever requested by Company, any person considered by Company to be incompetent, insubordinate, careless, disorderly, in violation of the above restriction on firearms, illegal drugs or intoxicating liquor, or under the influence of illegal drugs or intoxicating liquor, and such person shall not again be employed in the performance of the Work herein without the consent of Company.

**ARTICLE 19. ACCESS TO COMPANY'S FACILITIES****19.1 Requirements for Access**

Access to Company controlled areas is granted on an as-needed basis only in accordance with Company's internal badge and access policies. Company shall specify in the Release or Scope of Work whether or not the Work under this Contract requires either: (i) unescorted physical access to Company's Facilities; or (ii) local or remote

access to Company's Cyber Assets. For all Personnel who require either such access, Consultant shall:

- a. Conduct, at Consultant's cost and expense, a Personnel risk assessment to include at a minimum an identity verification, E-Verify and seven-year criminal background check for the current residence and past locations of residence of all Personnel requiring access. All background checks will be conducted in accordance with federal, state, provincial and local laws, and subject to existing collective bargaining unit agreements or other agreements, if any. A background check completed within two (2) years prior to the date the Consultant signed a Contractor/Vendor Information Form for each such person will be considered valid. Following the initial background check, updates shall be performed no less frequently than every seven (7) years or upon request by Company. In the event Company notifies Consultant of impending expiration of a background check, Consultant shall provide an updated Contractor/Vendor Information Form reflecting a refreshed background check within twenty (20) days of receipt of the Notice in order to avoid revocation of such person's access. An appropriate authorization form must be signed by each of the Personnel prior to a background check being conducted, acknowledging that the background check is being conducted and authorizing the information obtained to be provided to Company;
- b. Ensure that Personnel have passed the background checks outlined in subsection 19.1(a) prior to requesting access to Company's Facilities and/or Cyber Assets. In the event any such person: (i) is currently under indictment for a crime punishable by imprisonment for a term exceeding one year; (ii) has been convicted (within the past seven years) in any court of a crime punishable by imprisonment for a term exceeding one year; (iii) is currently a fugitive of justice; or (iv) is an alien illegally or unlawfully in the United States, such person shall be considered a "restricted person" and may not be granted access without prior written consent from Company. In the event any such person's background check reveals any residency gap of six (6) consecutive months or more, Consultant shall review, evaluate, and document any such residency gap to ensure that it does not pose a risk to Company's Facilities or Cyber Assets, prior to making a determination that Personnel have passed the background check;
- c. Ensure that Personnel complete Company provided or approved training prior to requesting access;
- d. Ensure that Personnel have passed Consultant's drug and alcohol exam and are in compliance with Consultant's substance abuse/drug and alcohol policy as outlined in the SUBSTANCE ABUSE; DRUG AND ALCOHOL POLICY article; and
- e. Keep accurate and detailed documentation to confirm completion dates for background checks and all required training (initial and annual training, to the extent applicable), and certify to Company such documentation by completing a Contractor/Vendor Information Form, attached as Exhibit A, Appendix 1, hereto, for each person who will have access. Company has the right to audit Consultant's records supporting each Contractor/Vendor Information Form submitted to Company and to verify that the requisite background checks and training were performed. Consultant shall provide Company with all requested records supporting Contractor/Vendor Information forms within a reasonable time after receiving such a request, and in the form requested by Company, but not longer than three (3) business days following the date of such request.
- f. Notify the company in a timely manner of termination or change in status removing the need for access. In the case of Sensitive Personnel and/or involuntary termination, notification must be immediate. In all other cases, notification must be within one business day. The Enterprise Service Desk is available 24 hours a day by calling either (503) 813-5555 or (801) 220-5555.

Consultant shall not allow any person who has not met the foregoing requirements of this subsection 19.1 to perform Work, unless Consultant has received prior written consent from Company.

#### 19.2 Additional Access Requirements Specific to Sensitive Personnel

In addition to the access requirements outlined in subsection 19.1, with respect to all Sensitive Personnel, Consultant also shall:

- a. Ensure that Sensitive Personnel (and any Personnel with access to BCSI) are informed of and comply with Company's BCSI requirements contained in any confidentiality agreement previously executed by Consultant as well as the BCSI requirements set forth herein in CONFIDENTIAL INFORMATION; NONDISCLOSURE article; and
- b. In addition to the initial training requirement outlined in subsection 19.1(c), ensure that Sensitive Personnel complete annual Company provided or approved CIPS compliance training within Company's prescribed training window.

Consultant shall not allow any person who has not met the foregoing requirements of this subsection 19.2 to perform Work, unless Consultant has received prior written consent from Company.

#### **ARTICLE 20. SUBSTANCE ABUSE; DRUG AND ALCOHOL POLICY**

- a. Consultant shall have and ensure compliance with a substance abuse/drug and alcohol policy that complies with all applicable federal, state and/or local statutes or regulations. Consultant shall subject each of the Personnel to a drug test at Consultant's sole cost and expense. Such drug test shall, at a minimum, be a five (5) Panel Drug Test, which should be recognizable at testing labs as a "SamHSA5 panel at 50NG – THC cut-off".
- b. For any Personnel who have had a recent drug test, such recent drug test shall be documented pursuant to the previous Article. Consultant warrants that Consultant and the Personnel are in compliance with Consultant's substance abuse/drug and alcohol policy.
- c. During the course of Work performed under this Contract, Consultant shall keep accurate and detailed documentation of its drug policy and Personnel drug tests, which it shall submit to Company upon request.
- d. Consultant shall designate one person to be responsible for compliance with the requirements of this Article and all reporting and inquiries shall be made to a duly authorized representative of Company in a timely manner.

#### **ARTICLE 21. DEPARTMENT OF TRANSPORTATION**

Consultant shall ensure Department of Transportation compliance, including but not limited to valid driver's license, equipment inspections, hours of service and all appropriate documentation for any Personnel who may drive while on assignment to Company.

#### **ARTICLE 22. BUSINESS ETHICS**

Consultant, its employees, officers, agents, representatives and Subcontractors shall at all times maintain the highest ethical standards and avoid conflicts of interest in the performance of Consultant's obligations under this Contract. In conjunction with its performance of the Work, Consultant and its employees, officers, agents and representatives shall comply with, and cause its Subcontractors and their respective employees, officers, agents and representatives to comply with, all applicable laws, statutes, regulations and other requirements prohibiting bribery, corruption, kick-backs or similar unethical practices including, without limitation, the United States Foreign Corrupt Practices Act, the United Kingdom Bribery Act 2010, and the Company Code of Business Conduct. Without limiting the generality of the foregoing, Consultant specifically represents and warrants that neither Consultant nor any Subcontractor employees, officers, representatives or other agents of Consultant have made or will make any payment, or have given or will give anything of value, in either case to any government official (including any officer or employee of any governmental authority) to influence his, her, or its decision or to gain any other advantage for Company or Consultant in connection with the Work to be performed hereunder. Consultant shall maintain and cause to be maintained effective accounting procedures and internal controls necessary to record all expenditures in connection with this Contract and to verify Consultant's compliance with this Article. Company shall be permitted to audit such records as reasonably necessary to confirm Consultant's compliance with this Article. Consultant shall immediately provide notice to Company of any facts, circumstances or allegations that constitute or might constitute a breach of this Article and shall cooperate with Company's subsequent investigation of such matters. Consultant shall indemnify and hold Company harmless from all fines, penalties, expenses or other losses sustained by Company as a result of Consultant's breach of this provision. The Parties specifically acknowledge that Consultant's failure to comply with the requirements of this Article shall constitute a condition of default under this Contract.

#### **ARTICLE 23. REVIEW OF DELIVERABLES**

Review by Company of any Deliverables submitted by Consultant shall be solely for the benefit of Company and shall not relieve Consultant of its responsibility to comply with all requirements of the Contract and for the accuracy of the Deliverables.

#### **ARTICLE 24. SAFETY AND SITE REGULATIONS**

Consultant shall be solely responsible for being aware of and initiating, maintaining, and supervising compliance with all safety laws, regulations, precautions, and programs in connection with the performance of this Contract. Consultant shall, also make itself aware of and adhere to all applicable Company Work Site regulations including, without limitation, environmental protection, loss control, dust control, safety, and security. As a continuing condition to performing Work at any Work Site, Consultant may be required to maintain a subscription with

Company's third-party safety and loss information reporting service (the "Administrator"). The Administrator manages safety ratings and insurance certificates of Company's contractors. Consultant will provide safety related information as requested by the Administrator including Consultant's safety programs, OSHA documents, experience modification rates (EMR) and an insurance and safety questionnaire. A variance or exclusion to the subscription and information requirements under this paragraph may be granted by the Company's Designated Representative.

**ARTICLE 25. PROGRESS MEETINGS**

Company will conduct weekly, or at other regular intervals as agreed by both Parties, meetings with Consultant to discuss the performance of the Work.

**ARTICLE 26. COOPERATION WITH OTHERS**

Consultant shall fully cooperate and coordinate with Company employees and other contractors who may be awarded other work. Consultant shall not commit or permit any act which will interfere with the performance of work by Company employees or other contractors.

**ARTICLE 27. LIENS**

Consultant shall: (i) indemnify, defend, and hold harmless Company from all laborers', materialmen's, and mechanics' liens, or claims made or filed upon the Work Site or other Company property on account of any Work or Service performed or furnished by Consultant's Subcontractors of any tier in connection with the Work (including any liens or claims based on the failure or alleged failure to maintain a payment bond); and (ii) keep Company property free and clear of all liens or claims arising from the performance of any Work covered by this Contract by Consultant or its Subcontractors of any tier.

If any lien arising out of this Contract is filed before or after Work is completed, Consultant, within ten (10) calendar days after receiving from Company written Notice of such lien, shall obtain release of or otherwise satisfy such lien. If Consultant fails to do so, Company may take such steps and make such expenditures as in its discretion it deems advisable to obtain release of or otherwise satisfy any such lien or liens, and Consultant shall upon demand reimburse Company for all costs incurred and expenditures made by Company in obtaining such release or satisfaction. If any non-payment claim is made directly against Company arising out of non-payment to any Subcontractor (including any liens or claims based on the failure or alleged failure to maintain a payment bond), Consultant shall assume the defense of such claim within ten (10) calendar days after receiving from Company written Notice of such claim. If Consultant fails to do so, Consultant shall upon demand reimburse Company for all costs incurred and expenditures made by Company to satisfy such claim.

Consultant's obligation to indemnify, defend, and hold harmless Company from liens shall not in any way be rendered unenforceable, or altered, amended, eliminated or otherwise conditioned by any laws and regulations related to processing such liens. Company shall have no obligation to deliver a copy of any notice of claim or right to a lien to Consultant or any other person or entity.

**ARTICLE 28. CONFLICTS, ERRORS, OMISSIONS, OR DISCREPANCIES IN CONTRACT DOCUMENTS**

Consultant shall advise Company in writing of all conflicts, errors, omissions, or discrepancies among the various documents comprising this Contract immediately upon discovery and prior to Consultant's performing the affected Work. Company shall resolve such conflicts and such resolution shall be final. Anything mentioned in the specifications and not shown on the drawings, or shown on the drawings and not mentioned in the specifications, shall be considered as if shown or mentioned in both.

**ARTICLE 29. CLAIM NOTICE AND RESOLUTION PROCEDURE**

In the event Consultant has a claim or request for a time extension, additional compensation, any other adjustment of the Contract terms, or any dispute arising under the Contract (hereinafter "Claim"), Consultant shall provide Company with Notice of such Claim within five (5) business days following the occurrence of the event giving rise to the Claim. Consultant's failure to give Notice as required will constitute a waiver of all of Consultant's rights with respect to the Claim.

As soon as practicable after Claim notification, Consultant shall submit the Claim to Company with all supporting information and documentation. Consultant shall also respond promptly to all Company inquiries about the Claim and its basis.

Any Claim that is not disposed of by mutual agreement between the Parties shall be decided by Company, which shall provide a written decision to Consultant. Such decision shall be final unless Consultant, within thirty (30) days after such receipt of Company's decision, provides to Company a written protest, stating clearly and in detail the basis thereof. Consultant's failure to protest Company's decision within that time period shall constitute a waiver by Consultant of its right to dispute the decision. Even if a Claim arises, Consultant shall continue its performance of this Contract.

#### **ARTICLE 30. SUSPENSION OF WORK**

Company may, by written Notice, direct Consultant to suspend performance of any or all of the Work for a specified period of time. Upon receipt of such Notice to suspend, Consultant shall: (i) discontinue Work; (ii) place no further orders or subcontracts; (iii) suspend all orders and subcontracts; (iv) protect and maintain the Work; and (v) otherwise mitigate Company's costs and liabilities for those areas of Work suspended. Company shall pay Consultant an equitable amount for incremental costs incurred by Consultant as a result of the suspension and equitably extend any guaranteed completion dates to the extent such suspension adversely impacts Consultant's critical path to completion; provided, however, that if the suspension is due to Consultant's failure to comply with the Contract, no such payment shall be made or extension granted.

#### **ARTICLE 31. TERMINATION FOR CONVENIENCE**

Company may terminate this Contract in whole or in part at any time without cause prior to its completion by sending to Consultant written Notice of such termination. Upon such termination, Company shall pay to Consultant, in full satisfaction and discharge of all liabilities and obligations owed Consultant, an equitable amount for all Work satisfactorily performed by Consultant as of the date of termination, plus an equitable termination fee to address Subcontractor termination charges and other reasonable out-of-pocket costs demonstrably incurred by Consultant as the result of the termination provided that such costs cannot be reasonably mitigated. Company shall not be liable for anticipated profits, costs or overhead based upon Work not yet performed as of the date of termination.

#### **ARTICLE 32. TERMINATION FOR CAUSE**

32.1 For purposes of this Contract, a default by Consultant shall be the occurrence of any of the following:

- a. A breach by Consultant of any of its material obligations under the Contract, if such breach continues uncured for a period of seven (7) days after receipt of Notice from Company, unless Company agrees, in writing, to grant Consultant an extension of such seven (7) day period for a period of time to be determined at Company's sole discretion. In such circumstance, Company shall prescribe the new cure period in writing. For purposes of the Contract, a default by Consultant shall be deemed to include, without limitation, Consultant's refusal or neglect to supply sufficient and properly skilled Personnel, materials or Deliverables of the proper quality or quantity, or equipment necessary to perform the Work or Services described in the Contract properly, or Consultant's failure in any respect to prosecute the Work or Services described in the Contract or any part thereof with promptness, diligence and in accordance with all of the material provisions hereof;
- b. Consultant fails in any material respect to comply with any laws, ordinances or regulations pertaining to safety or environmental compliance;
- c. A determination that any representation, statement or warranty made by Consultant in this Contract or any other statement, report or document which Consultant is required to furnish to Company, was false or misleading in any material respect;
- d. The occurrence of any of the following: (i) the filing by or against Consultant of a proceeding under any bankruptcy or similar law, unless such proceeding is dismissed within thirty (30) calendar days from the date of filing; (ii) the making by Consultant of any assignment for the benefit of creditors; (iii) the filing by or against Consultant for a proceeding for dissolution or liquidation, unless such proceeding is dismissed within thirty (30) calendar days from the date of filing; (iv) the appointment of or the application for the appointment of a receiver, trustee, or custodian for any material part of Consultant's assets unless such appointment is revoked or dismissed within thirty (30) calendar days from the date thereof; (v) the attempt by Consultant to make any adjustment, settlement, or extension of its debts with its creditors generally; (vi) the insolvency of Consultant or; (vii) the filing or recording of a notice of lien or the issuance or the obtaining of a levy of execution upon or against a material portion of Consultant's assets, unless such lien or levy of execution is dissolved within thirty (30) calendar days from the date thereof; or



- e. A Material Adverse Change has occurred with respect to Consultant and Consultant fails to provide such performance assurances as are reasonably requested by Company, including without limitation the posting of Default Security pursuant to ARTICLE 9. SECURITY article.
- 32.2 Upon the occurrence of any such default, following the applicable process described in this Article, Company shall be entitled upon written Notice to Consultant and without notice to Consultant's sureties and without limiting any of Company's other rights or remedies, to terminate this Contract or Consultant's right to proceed with that portion of the Work affected by any such default and collect the Net Replacement Costs incurred to complete the Work.
- 32.3 Upon the occurrence of any such default, Company shall be entitled to make one or more draws against any Default Security as may be provided by Consultant hereunder.
- 32.4 Upon the occurrence of any such default, Company shall be entitled to pursue any and all other rights and remedies that it may have against Consultant under this Contract or at law or in equity.
- 32.5 In the event of a full or partial termination under this Article, Company may, for the purpose of completing the Work or enforcing these provisions, take possession of all completed and in-process Deliverables use them or may finish the Work by whatever method it may deem expedient including: (i) Company may hire a replacement contractor or contractors to complete the remaining Work that Consultant was otherwise obligated to complete under the Contract using such form of agreement as Company may deem advisable; or (ii) Company may itself provide any labor or materials to complete the Work.
- 32.6 All rights and remedies provided in this Article are cumulative, and are not exclusive of any other rights or remedies that may be available, whether provided by law, equity, statute, in any other agreement between the Parties or otherwise. Upon the occurrence of any such default, following the applicable process described in this Article, Company shall be entitled to pursue any and all other rights and remedies, including without limitation damages, that Company may have against Consultant under this Contract or at law or in equity.

### **ARTICLE 33. DELAYS**

**Force Majeure.** Neither Party shall be liable for delays caused by a Force Majeure Event; provided, however, that both Parties agree to seek to mitigate the potential impact of any such delay. Any delay attributable to a Force Majeure Event shall not be the basis for a request for additional compensation. In the event of any such delay, the required completion date(s) may be extended for a reasonable period not exceeding the time actually lost by reason of the Force Majeure Event.

**Company-Caused Delay.** If Consultant is actually delayed in its performance of the Work by the actions or omissions of Company (excluding the Company's good faith exercise of rights and remedies provided under the Contract), or by changes ordered with respect to the Work, and if Consultant is able to prove that it has used all reasonable means to avoid or minimize the effects of the delay, then, as Consultant's sole remedy, Consultant's guaranteed completion dates shall be equitably adjusted to reflect the impacts of such Company-caused delays. No adjustment under this Article shall be made for any delay to the extent that it is caused or contributed to by Consultant or performance would have otherwise been delayed by any other cause, including the fault or negligence of Consultant. Company may determine whether Consultant has met its burden described in this Article either before or after the completion deadline. If before the completion deadline, Company determines Consultant has met its burden as described in this Article, then Company may issue a written change order to extend the schedule. If after the completion deadline, Company determines Consultant has met its burden described in this Article, then Company may extend the completion deadline and thereby relieve Consultant of the obligation to pay liquidated damages.

**Consultant-Caused Delays.** Any Work that is not delivered in accordance with the Scope of Work may constitute a default to the extent set forth in the terms and conditions of this Contract, provided that the delay is not related to either a Force Majeure Event or Company-caused delay.

**Request For Time Extension.** Any request for time extension shall be made in accordance with the CLAIM NOTICE AND RESOLUTION PROCEDURE article.

### **ARTICLE 34. COMPLIANCE WITH LAWS**

Consultant shall at all times comply with all laws, statutes, regulations, rules, executive orders, ordinances, codes, and standards applicable to Consultant's performance of the Work including, without limitation, those

governing health and safety, wages, hours, employment of minors, desegregation and employment discrimination, as each may be applicable to the Work performed hereunder, and based on total anticipated dollar value of this Contract. Consultant further confirms that its employees and the employees of all Subcontractors employed under the Contract may legally work in the United States.

**Without limiting the generality of the foregoing, Consultant and any Subcontractors shall abide by the requirements of 41 CFR §§60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity, national origin or discussion of compensation. Moreover, these regulations require that covered prime contractors and Subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, protected veteran status or disability. Consultant and any Subcontractors shall also abide by the requirements of Executive Order 11246, as amended, to develop and maintain a written affirmative action program (AAP) and Executive Orders 11625 and 13170 (utilization of disadvantaged business enterprises) and the Small Business Act. To the extent applicable, the employee notice requirements set forth in 29 CFR Part 471, Appendix A to Subpart A, are hereby incorporated by reference into this Contract.**

Consultant shall indemnify, defend and hold harmless Company, its directors, officers, employees and agents from all losses, costs and damages by reason of any violation thereof and from any liability, including without limitation fines, penalties and other costs arising out of Consultant's failure to so comply.

#### **ARTICLE 35. INDEPENDENT CONTRACTOR**

Consultant is an independent contractor and all persons employed by Consultant in connection herewith shall be employees of Consultant and not employees of Company in any respect. Consultant shall maintain complete control over Consultant's employees and Subcontractors.

#### **ARTICLE 36. RELEASE OF INFORMATION; ADVERTISING AND PROMOTION**

Consultant shall not publish, release, disclose, or announce to any member of the public, press, official body, or any other third party any information concerning this Contract and/or the Work, or any part thereof, without the express prior written consent of Company, except as required by law. Neither the names of Company, nor the Work Site shall be used in any advertising or other promotional context by Consultant without the express prior written consent of Company.

#### **ARTICLE 37. CONFIDENTIAL INFORMATION; NONDISCLOSURE**

**BES Cyber System Information.** Confidential Information of Company labeled as BCSI shall be protected consistent with the following requirements: (a) BCSI shall be protected at all times, either by appropriate storage or having it under the personal observation and control of a person authorized to receive it; (b) each person who works with protected BCSI is personally responsible for taking proper precautions to ensure that unauthorized persons do not gain access to it; (c) reasonable steps shall be taken to minimize the risks of access to BCSI by unauthorized personnel (when not in use, BCSI shall be secured in a secure container, such as a locked desk, file cabinet or facility where security is provided); (d) documents or material containing BCSI may be reproduced to the minimum extent necessary, consistent with the need to carry out the Work, provided that the reproduced material is marked and protected in the same manner as the original material; (e) material containing BCSI should be disposed of through secured shredding receptacles or other secured document destruction methods; (f) BCSI shall be transmitted only by the following means: (i) hand delivery; (ii) United States first class, express, certified or registered mail, bonded courier, (iii) secure electronic means with NIST- or ISO-compliant encryption; and (g) documents or material containing BCSI shall be returned to Company or certified destroyed upon completion of the Work..

**Nondisclosure.** Consultant agrees that it will not disclose Confidential Information, directly or indirectly, under any circumstances or by any means, to any third person without the express written consent of Company.

**Nonuse.** Consultant further agrees that it will not use Confidential Information except as may be necessary to perform the Work called for by this Contract.

**Protection.** Confidential Information will be made available by Consultant to its employees only on a "need to know" basis and only after notifying such employees of the confidential nature of the information and after having obligated them to the nonuse and nondisclosure obligations of this Contract. Consultant agrees to take all reasonable precautions

to protect the confidentiality of Confidential Information and, upon request by Company, to return to Company any documents which contain or reflect such Confidential Information.

**Federal Defend Trade Secrets Act.** The Federal Defend Trade Secrets Act of 2016 provides immunity from civil or criminal liability for any employee or contractor who discloses a trade secret “in confidence to a Federal, State, or local government official, either directly or indirectly, or to an attorney” where the disclosure by the employee or contractor is “solely for the purpose of reporting or investigating a suspected violation of law” or “is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal.” 18 U.S.C. § 1833(b). Nothing in this Contract is intended to conflict with 18 U.S.C. § 1833(b) or create liability for disclosures of trade secrets that are expressly allowed by 18 U.S.C. § 1833(b).

Unless waived by Company, Consultant shall require its employees and Subcontractors of any tier to adhere to these confidential information and nondisclosure terms.

#### **ARTICLE 38. OWNERSHIP OF DESIGNS, DRAWINGS AND WORK PRODUCT**

The Deliverables prepared or developed hereunder, or other documents or information provided to Company, by Consultant or its employees or agents, or Subcontractors or their employees or agents, including without limitation drawings, specifications, manuals, calculations, maps, sketches, designs, tracings, notes, reports, data, computer programs, models and samples, shall become the physical property of Company when prepared and, to the extent subject to protection under copyright laws, shall constitute “work made for hire” and shall become the intellectual property of Company, without regard to any markings that may denote a confidential or proprietary interest of Consultant in the said items. To the extent the Deliverables incorporate pre-existing intellectual property of Consultant or of any third party (“Pre-Existing Property”), Consultant hereby grants Company a perpetual, fully paid, transferable right to use, copy and modify such Pre-Existing Property for the purpose of Company’s operation, administration, maintenance, modification, improvement and replacement of the Company’s assets the fullest extent necessary to accomplish those purposes. Such license includes the right of Company to share Pre-Existing Property to Company’s contractors, agent, officers, directors, employees, joint owners, affiliates and consultants for the foregoing purposes, without regard to any markings that may denote a confidential or proprietary interest in the said items. Consultant hereby represents, warrants and covenants that it holds all requisite rights and third party consents necessary to grant the foregoing license without infringing the rights of any third party. Consultant shall deliver all Deliverables, together with any documents or information furnished to Consultant and its employees or agents by Company hereunder, upon Company’s request and, in any event, upon termination or final acceptance of the Work.

#### **ARTICLE 39. PATENT AND COPYRIGHT INDEMNITY**

Consultant shall indemnify, defend, and hold harmless Company, its directors, officers, employees, and agents against and from all claims, losses, costs, suits, judgments, damages, and expenses, including attorneys’ fees, of any kind or nature whatsoever on account of infringement of any patent, copyrighted or uncopyrighted work, including claims thereof pertaining to or arising from Consultant’s performance under this Contract. If notified promptly in writing and given authority, information, and assistance, and contingent upon Company not taking any position adverse to Consultant in connection with such claim, Consultant shall defend, or may settle at its expense, any suit or proceeding against Company so far as based on a claimed infringement which would result in a breach of this warranty, and Consultant shall pay all damages and costs awarded therein against Company due to such breach.

In case any Service or Deliverable is in such suit held to constitute such an infringement and the use of said Service or Deliverable is enjoined, Consultant shall, at its expense and through mutual agreement between Company and Consultant, either procure for Company the right to continue using said Service or Deliverable, or replace same with a non-infringing Service or Deliverable, or modify same so it becomes non-infringing.

#### **ARTICLE 40. CYBER SECURITY**

##### **40.1 SCOPE OF THIS ARTICLE**

This Article applies to Consultant and its Personnel and Subcontractors that provide hardware, software, or services to the Company that may impact the confidentiality, integrity, or availability of the Company’s networks, systems, software, Data, or Confidential Information for the term of the Contract.

##### **40.2 CYBER SECURITY CONTROLS**

- a. Consultant shall have and maintain security controls to protect the Company’s networks, systems, software, Confidential Information, and Data that are no less rigorous than the latest published version of ISO/IEC

27001 – Information Security Management Systems–Requirements, and ISO/IEC 27002 – Code of Practice for International Security Management

- b. Consultant agrees to disclose to the Company known security vulnerabilities in hardware, software, and services provided under the Contract in a timely manner.
- c. Consultant warrants that the hardware, software, and patches provided under the Contract, will not contain malicious code or any unwanted or unexpected features. Consultant agrees to provide a method to verify the integrity and authenticity of all software and patches provided by the Consultant.
- d. Consultant shall follow all applicable Company requirements for Consultant-initiated interactive remote access and system-to-system remote access with Consultant. To the extent Consultant's Personnel will have interactive remote access to Company's networks, systems or applications, Consultant's Personnel will use multi-factor authentication provided by the Company. Authentication tokens and passwords must not be shared. Upon either (i) Personnel termination actions or (ii) changes in the status of Personnel which removes their need for remote access, Consultant shall report such termination or change in status to the Company's Service Desk by telephone and email as soon as practicable and no later than close of the same business day. In the case of Sensitive Personnel and/or involuntary termination, notification must be immediate. In all other cases, notification must be within one business day.

### **40.3 OVERSIGHT OF COMPLIANCE**

As evidence of compliance, Consultant shall either:

- a. Provide annually to the Company a Statement on Standards for Attestation Engagements (SSAE) Service Organization Control (SOC) 2 Type II audit covering the scope of the contract; or,
- b. Provide annually to the Company a copy of ISO 27001 certification covering the scope of the contract; or,
- c. Provide annually to the Company a third-party audit covering the security controls relevant to hardware, software, or services provided under this contract. Audit results and Consultant's plan to correct any negative findings must also be made available to the Company; or,
- d. Allow Company to conduct an assessment, audit, examination, or review of Consultant's security controls to confirm Consultant's adherence to the terms of this Article, as well as any applicable laws, regulations, and industry standards, not more than once per year or upon notification of any Security Incident or complaint regarding Consultant's privacy and security practices. Company may elect to obtain the services of a mutually-agreeable third party to conduct this assessment, audit, examination, or review on behalf of Company. Company shall give Consultant no less than thirty (30) calendar days' notice of its intent to conduct such assessment, audit, examination, or review. As part of this assessment, audit, examination, or review, Company may review all controls in Consultant's physical and/or technical environment in relation to all Confidential Information being handled and/or hardware, software, or services being provided pursuant to this Contract. Consultant shall fully cooperate with such assessment by providing access to knowledgeable personnel, physical premises, documentation, infrastructure, application software, and systems relevant to the provision of hardware, software, or services under the Contract.

### **40.4 SECURITY BREACH PROCEDURES; EQUITABLE RELIEF**

In the event of a Consultant, or subcontractor Security Incident affecting the Company, the Company's networks, systems, software, Data, or the Company's Confidential Information,

- a. Consultant shall:
  - (i) notify the Company of the Security Incident as soon as practicable, but no later than 48 hours after Consultant becomes aware of it, by telephone and email; and
  - (ii) provide the Company with the name and contact information for any Personnel who shall serve as Consultant's primary security contact and shall be available to assist the Company with Security Incident management, response, and recovery associated with the Security Incident.
- b. Immediately following Consultant's notification to the Company of a Security Incident, the Parties shall coordinate with each other to investigate such Security Incident. Consultant agrees to coordinate with Company in Company's handling of the matter, including: (i) assisting with any investigation and (ii) making available all relevant records and other materials required to comply with applicable law, regulation, industry standards, or otherwise reasonably required by Company.
- c. Consultant shall use best efforts to immediately remedy any Security Incident and prevent any further or recurrent Security Incident at Consultant's expense in accordance with applicable privacy laws,

regulations, and standards. Consultant shall reimburse Company for actual reasonable costs incurred by Company in responding to, and mitigating damages caused by, any Security Incident, including all costs of notice and/or remediation pursuant to this section.

- d. Consultant shall fully cooperate at its own expense with Company in any litigation or other formal action deemed reasonably necessary by Company to protect its rights relating to the use, disclosure, protection, and maintenance of its Confidential Information and Data.
- e. Consultant acknowledges that any breach of Consultant's obligations set forth in this Article may cause Company substantial irreparable harm for which monetary damages would not be adequate compensation and agrees that, in the event of such a breach or threatened breach, Company is entitled to seek equitable relief, including a restraining order, injunctive relief, specific performance and any other relief that may be available from any court, in addition to any other remedy to which Company may be entitled at law or in equity. Such remedies shall not be deemed to be exclusive but shall be in addition to all other available remedies at law or in equity, subject to any express exclusions or limitations in the Contract to the contrary.

#### **40.5 OBLIGATIONS ON TERMINATION AND TERMINATION ASSISTANCE**

In addition to any other obligations that arise on termination or expiration of this Contract, the Parties agree that, on any expiration or termination of this Contract, upon completion of the delivery of the products and services to be provided under this Contract, or at any time upon Company's request, regardless of the circumstance:

- a. Consultant shall immediately surrender to Company all access cards, security passes, passwords and other such devices granting access to any Work Site or to Company networks or computer systems; and
  - (i) Consultant shall return any Data that is in its care, custody or control to Company in the format requested by Company and Consultant shall, after receiving Company's written confirmation that it can read the Data provided by Consultant, permanently delete any copies of the Data in Consultant's care, custody or control.
  - (ii) Consultant will return to Company all hardware and removable media provided by Company that contains Company Information. Company Information in such returned hardware and removable media may not be removed or altered in any way. The hardware should be physically sealed and returned via a bonded courier or as otherwise directed by Company. If the hardware or removable media containing Company Information is owned by Consultant or a third-party, a written statement detailing the destruction method used and the data sets involved, the date of destruction and the entity or individual who performed the destruction will be sent to a designated Company security representative within fifteen (15) calendar days after completion of the delivery of the products and services to be provided under this Contract, or at any time upon Company's request. Consultant's destruction or erasure of Company Information pursuant to this Article must be in compliance with NIST or ISO Standards.

Prior to the expected expiration or termination of a Contract Document by either Party for any reason, or prior to the expected expiration or termination of this Contract for any reason, including the default of the terms of a Contract Document or a default under this Contract, Consultant agrees to provide Company with the reasonable assistance services requested by Company. These services will include, at a minimum, converting data, providing parallel services until Company has transitioned to a new system, providing on-site technical support, cooperating with Company or its designated vendor in developing required interfaces, and such other assistance services as shall be necessary or appropriate to facilitate, without material or extended interruption to the Services, the orderly transition of the Services to Company or its new provider of services. The Parties agree that assistance services may extend beyond the Term as reasonably required by Company.

#### **40.6 PROHIBITED VENDORS**

Consultant may not use the services, products, component pieces or sub-assemblies of any company identified by the US Government and/or regulatory authorities as a security threat in the provision of Work or Services to Company, either directly or via subcontractors. The current list of prohibited vendors includes Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, Dahua Technology Company, Da Jiang Innovations (DJI), AO Kaspersky Lab, ZTE Corporation, and Huawei Technologies Co. Inc. If Consultant fails to abide by this requirement, Company will provide Consultant with notice and a 30 day opportunity to cure. Continued failure to abide by this requirement will be considered a material breach of this Contract.

**ARTICLE 41. ASSIGNMENT**

Company may at any time assign its rights and delegate its obligations under this Contract, in whole or in part, including, without limitation, transferring its rights and obligations under this Contract to any: (i) affiliate; (ii) successor in interest with respect to the Work Site; or (iii) corporation or any other business entity in conjunction with a merger, consolidation, or other business reorganization to which Company is a party. Consultant shall not assign any of its rights or responsibilities, nor delegate its obligations, under this Contract or any part hereof without the prior written consent of Company, and any attempted transfer in violation of this restriction shall be void.

**ARTICLE 42. SUBCONTRACTS**

Consultant shall not subcontract any or all of the Work without prior written consent of Company which shall not be unreasonably withheld. Consultant shall be fully responsible for the acts or omissions of any Subcontractors of any tier and of all persons employed by them, shall maintain complete control over all such Subcontractors, and neither the consent by Company, nor anything contained herein, shall be deemed to create any contractual relation between the Subcontractors of any tier and Company.

Company is committed to and understands the importance of promoting diversity among its consultants and their Subcontractors by increasing the amount of business conducted with qualified diverse business enterprises, including women-owned, minority-owned, disabled veteran-owned, and lesbian, gay, bisexual, and transgender (“LGBT”)-owned businesses. Company expects the same level of commitment from Consultant when it subcontracts any of the Work to Subcontractors of any tier. In the event of any spend activity with qualified diverse Subcontractors in a given monthly period, Consultant shall submit, by the 10th day of the following month, the Diversity Subcontractor Spend Report included as Exhibit H. Consultant shall submit the Diversity Subcontractor Spend Report to [supplierdiversity@pacificorp.com](mailto:supplierdiversity@pacificorp.com).

In the event that a state agency or regulatory commission audits any Company report or filing concerning diverse consultant spend activity that had been prepared utilizing information provided at least in part by Consultant, Consultant shall provide Company with all substantiating documentation to sufficiently support Company’s report or filing within five (5) business days of any request. Examples of documentation that Company may request include, but are not limited to, contracts or purchase orders between Consultant and any of its Subcontractors identifying Company as the ultimate recipient, invoices between Consultant and any of its Subcontractors identifying Company as the ultimate recipient, and proof of payment by Consultant to any of its Subcontractors.

**ARTICLE 43. NON-EXCLUSIVE RIGHTS**

Nothing in this Contract is to be construed as granting to Consultant an exclusive right to provide any or all of the Work anticipated herein. The use of Consultant’s services is completely discretionary with Company. This Contract shall not be construed in any way to impose a duty upon Company to use Consultant.

**ARTICLE 44. NONWAIVER**

The failure of Company to insist upon or enforce strict performance by Consultant of any of the terms of this Contract or to exercise any rights herein shall not be construed as a waiver or relinquishment to any extent of Company’s right to enforce such terms or rights on any future occasion.

**ARTICLE 45. SEVERABILITY**

Any provision of this Contract prohibited or rendered unenforceable by operation of law shall be ineffective only to the extent of such prohibition or unenforceability without invalidating the remaining provisions of this Contract.

**ARTICLE 46. APPLICABLE LAW AND VENUE**

This Contract shall be interpreted in accordance with the substantive and procedural laws of the State of Oregon. Any litigation between the Parties arising out of or relating to this Contract will be conducted exclusively in federal or state courts in the State of Oregon and Consultant consents to jurisdiction by such courts. TO THE FULLEST EXTENT PERMITTED BY LAW, EACH OF THE PARTIES HERETO WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS CONTRACT. EACH PARTY FURTHER WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER

ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED. THIS PARAGRAPH WILL SURVIVE THE EXPIRATION OR TERMINATION OF THIS CONTRACT.

**ARTICLE 47. ENTIRE AGREEMENT; DOCUMENTS INCORPORATED BY REFERENCE**

This Contract and any referenced exhibits and attachments, constitute the complete agreement between the Parties. All understandings, representations, warranties, agreements and any referenced attachments, if any, existing between the Parties regarding the subject matter hereof are merged into and superseded by this Contract, which fully and completely expresses the agreement of the Parties with respect to the subject matter hereof. Any Scope of Work, drawings, schedules or other documents listed in this Contract are incorporated by reference into this Contract. In the event of a conflict between (i) any Scope of Work, drawings, schedules or other attachment or exhibit to this Contract and (ii) the above terms and conditions of this Contract, the above terms and conditions of this Contract shall take precedence and control.

Company assumes no responsibility for any understanding or representation made by any of its employees, officers or agents during or prior to the negotiations and execution of this Contract, unless such understanding or representation is expressly stated in the Contract.

[Signature Page Follows]

**ARTICLE 48. EXECUTION AND EFFECTIVE DATE**

This Contract has been executed by duly authorized representatives of the Parties and shall only be effective as of date of execution by both Parties.

**CONSULTANT:**

**COMPANY:  
PACIFICORP**

**By:** \_\_\_\_\_

**(Signature)**

**Name:** \_\_\_\_\_

**(Type or Print)**

**Title:** \_\_\_\_\_

\_\_\_\_\_  
**(Date Executed)**

**By:** \_\_\_\_\_

**(Signature)**

**Name:** \_\_\_\_\_

**(Type or Print)**

**Title:** \_\_\_\_\_

\_\_\_\_\_  
**(Date Executed)**