

April 2, 2020

MAINE PUBLIC UTILITIES COMMISSION
Competitive Procurement for the
Output of Distributed Generation
(P.L. 2019, ch. 478, Part B)

ISSUANCE OF ADDENDUM
OF PROCUREMENT
ANNOUNCEMENT AND
RULE WAIVER

Through this Order, the Director of Electric and Gas Industries (1) issues Addendum 1 to the Procurement Announcement issued on February 28, 2020; and (2) grants a waiver of section 7(G) of Chapter 312 of the Commission's Rules relating to the application of bidding fees to the procurement process for distributed generation.

I. BACKGROUND

During its 2019 session, the Legislature enacted an Act To Promote Solar Energy Projects and Distributed Generation Resources in Maine, P.L. 2019, Chapter 478 (Act). Part B¹ of the Act created a distributed generation procurement process that requires the Commission to solicit long-term contract proposals for targeted amounts of energy, capacity and renewable energy credits (RECs) from developers of renewable distributed generation facilities of less than 5 MWs. On December 11, 2019, the Commission issued an Order adopting a new rule, Chapter 312, to govern the procurement process for the output of distributed generation resources in the State.

On February 28, 2020, the Commission issued a Procurement Announcement (PA) setting forth the instructions for bidders and an explanation of the procurement process.² Pursuant to the schedule set forth in the Procurement Announcement, the Bidder Qualification Window closes on April 2, 2020, at which time the Commission's consultant Enel X will issue Notices to Proceed to qualified bidders.

A. Issuance of Addendum to Procurement Announcement

The Project Qualification Submission Window opens on April 3, 2020. To facilitate the project qualification process, Commission Staff has prepared Addendum 1 to the Procurement Announcement, issued as an attachment to this Order.³ This

¹ Part A of the Act modified Maine's Net Energy Billing (NEB) program. See *Maine Public Utilities Commission Amendments to Chapter 313 – Net Energy Billing*, Docket No. 2019-00197.

² The Procurement Announcement can be found at the Commission's webpage for the distributed generation procurement: <https://www.maine.gov/mpuc/electricity/rfps/dg-procurement/index.shtml>

³ The Addendum also can be found at the Commission's webpage referenced in footnote 2.

Addendum contains important and updated information for bidders relating to getting their projects approved. The Presiding Officer issued a Procedural Order on March 27, 2020, modifying the process for submission of required nonministerial permits. The Addendum will explain the modified process and schedule in more detail. In addition, the Addendum will address, among other things, demonstration of site control, financial assurance requirements, and the affidavit requirements for siting attributes.

B. Rule Waiver To Address Bidding Fees

The Act provides that the Commission may by rule “require a bidder to pay a reasonable bidding fee to defray administrative costs.”⁴ The Commission included a provision for bidding fees in Section 7(G) of Chapter 312, which provides:

The Commission may require bidders to pay a reasonable and non-refundable bidding fee to defray the Commission’s administrative costs. The bidding fee, which shall not exceed \$5 per kW of the project’s nameplate capacity, or \$12,500 per project, shall be set forth in the procurement announcement for the applicable procurement round and shall be provided by bidders at the time their bid is submitted or as otherwise required by the procurement announcement.

Section 7(C) describes the purpose and the contents of the Procurement Announcement, stating that it would “establish the amount of any bidding fee and financial security requirements.”

The language in the rule conflated application fees with bidding fees. Application fees are relatively nominal amounts, which will help defray administrative expenses associated with the procurement process.⁵ The \$5 per kilowatt amount set forth in the rule is more in the nature of earnest money, which is intended to ensure that a bidder is submitting a serious and binding proposal.⁶

⁴ 35-A M.R.S. § 3484(4).

⁵ Bidders have submitted the \$250 application fee to participate in the Bidder Qualification process and must submit \$150 per project to participate in the Project Qualification process.

⁶ During the rulemaking process for Chapter 312, stakeholders had expressed approval of an earnest money approach to ensure a fair and competitive process. See, e.g., the following comments entered in the rulemaking docket, 2019-00219: New England Hydropower Company Comments (Oct. 16, 2019) (“NEHC believes the Commission should establish a reasonable bidding fee that ensures committed development while maintaining a level playing field for new market entrants.”); Conservation Law Foundation Comments (Oct. 18, 2019) (the bidding fee should be high enough “to ensure only serious bidders participate, but not so high as to discourage most or all real bidders”); Maine Renewable Energy Association and Coalition for Community Solar Access Joint Comments (Oct. 18, 2019) (“a meaningful financial deposit should be required at the time of bid submission to the initial solicitation to discourage speculative or irrational bidding behavior.”); TurningPoint Energy Comments (Oct. 18, 2019) (“non-refundable bid deposits must be required to weed out speculative projects or irrational bidding behavior.”); Borrego Solar Comments (Sept. 18, 2019) (“Requiring a meaningful financial deposit at the time of bid submission ... will help ensure that bidders are submitting only the most viable, competitive projects, which will minimize ratepayer impact.”).

On February 28, 2020, the Commission issued the Procurement Announcement, drawing a distinction between application fees and bidding fees. Section 5.3 of the PA states that a non-refundable Bidder Application Fee of \$250 must be paid at the Bidder Qualification Phase. Sections 6.4.1 and 7.4.1 state that a non-refundable Project Application Fee of \$150 must be submitted for each project that a qualified bidder seeks to enter into the Project Qualification phase of the procurement.⁷ These application fees serve to defray the Commission's administrative costs, in accordance with the statute.

With respect to bidding fees, the Procurement Announcement set forth instructions regarding a "Financial Security Deposit" as follows:

Upon completion of the Project Qualification phase and receipt of a Project Notice to Proceed, Projects intending to submit a Bid Offer Rate will be required to submit a Financial Security Deposit. The Financial Security Deposit is refundable in the event a Project is not selected by the Commission in this Procurement Round.

For Projects selected by the Commission, the Financial Security Deposit may be carried forward and applied to any required Project Assurance as required in the Commission's Notice of Awards (see Section 12 of this PA).

8.1.1. Amount

The amount of the Financial Security Deposit required will be determined by the Commission and communicated to Bidders by the commencement of the Project Qualification phase.⁸

The Procurement Announcement comports with the underlying purpose of Section 7(G) of Chapter 312, that is, to ensure that a bidder is entering a bid that reflects a serious and sincere desire to compete in this first round of distributed generation procurement.

Section 11 of Chapter 312 provides that upon the request of any person subject to this Chapter or upon its own motion, the Commission may, for good cause, waive any requirement of this Chapter that is not required by statute. The waiver may not be inconsistent with the purposes of the rule or the statute. The Commission, the Director of Electric and Gas Utility Industries, or the Presiding Officer may grant the waiver.

Section 7(G) of Chapter 312 does not set forth a distinction between application fees and the financial security deposit that will be made by bidders at the time of their bid. The Procurement Announcement, and Addendum 1 to the Procurement Announcement provide explanations and instructions as to the filing of these fees.

⁷Section 6.4.1 applies to bidders seeking to bid output from shared distributed generation resources. Section 7.4.1 applies to commercial or industrial distributed generation resources.

⁸ Addendum 1 to the Procurement Announcement sets forth how the Financial Security Deposit is determined.

Bidders must rely on those instructions in submitting their projects and their bids in the procurement. To the extent these instructions differ from section 7(G) of the rule, I find there is good cause for waiver of that section of the rule. I find further that granting the waiver would not be inconsistent with the requirements of Chapter 312 or the Act.

O R D E R

The Director of Electric and Gas Industries hereby ORDERS

1. Addendum 1 to the Procurement Announcement, dated April 2, 2020, attached to this Order is approved;
2. The bidding fee requirement in section 7(G) of Chapter 312 is waived; and
3. The provision for bidding fees set forth in the Addendum 1 to the Procurement Announcement shall apply to the pending procurement for the output of distributed generation resources.

Dated at Hallowell, Maine, this 2nd day of April, 2020.

BY ORDER OF THE DIRECTOR OF ELECTRIC AND GAS INDUSTRIES



Faith Huntington