

## IOWA UTILITIES BOARD

<p>IN RE:</p> <p>REVIEW OF COMPETITIVE BIDDING PROCESS RULES [199 IOWA ADMINISTRATIVE CODE CHAPTER 40]</p>	<p>DOCKET NO. RMU-2023-0040</p>
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### **ORDER OPENING DOCKET AND SETTING TECHNICAL CONFERENCE AND COMMENT DEADLINE**

On January 10, 2023, Gov. Kim Reynolds issued Executive Order Number 10 (Executive Order), which put a moratorium on agency rulemaking and directed agencies, including the Utilities Board (Board), to engage in a comprehensive evaluation of existing rules. The goals of the Executive Order include increasing public input in the rulemaking process, eliminating rules that do not provide substantial benefits to Iowans, reducing the page and word count of the Iowa Administrative Code, and reducing restrictive rule language. As part of the comprehensive review, agencies are required to repeal each rules chapter and evaluate whether the chapter, or a portion of the chapter, should be re-promulgated. To assist agencies in performing their comprehensive reviews, the Iowa Department of Management developed and published forms and processes. See <https://dom.iowa.gov/red-tape-reviews> (last accessed on Jan. 19, 2024).

Pursuant to the Executive Order, the Board is conducting comprehensive reviews of each chapter of its administrative rules, and the Board will open the above-captioned docket for purposes of conducting a comprehensive review of chapter 40, which contains the Board's Competitive Bidding Process rules. Attached to this order as

DOCKET NO. RMU-2023-0040

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Attachment A is the Board's retrospective analysis (Red Tape Review Rule Report) of chapter 40, which the Board will publish on the Board's website as required by section III.B of the Executive Order. Attached to this order as Attachment B is the Board's draft regulatory analysis of chapter 40, which the Board will submit in the legislative Rules Management System for publication in the Iowa Administrative Bulletin. The draft regulatory analysis attached to this order as Attachment B will be submitted to the Administrative Rules Code Editor for review and publication in the Iowa Administrative Bulletin and may contain changes from the version attached to this order. Finally, attached to this order as Attachment C is a draft version of chapter 40 that the Board is evaluating whether to re-promulgate. Most of the current proposed changes to chapter 40 center on the removal of unnecessary and restrictive language.

The Board is also scheduling a technical conference for March 13, 2024. The technical conference will be led by Board staff and participation may occur in person or by webinar. The purpose of the technical conference is to receive comments regarding the draft regulatory analysis and the proposed version of chapter 40 to be re-promulgated. Additionally, the Board will accept written comments concerning the draft regulatory analysis and the proposed re-promulgated version of chapter 40 through March 13, 2024. The Board will use the oral and written comments received to prepare a final version of the regulatory analysis, which will be uploaded in this docket and published on the Board's website.

**IT IS THEREFORE ORDERED:**

1. Docket No. RMU-2023-0040 is opened for the purpose of conducting a comprehensive review of 199 Iowa Administrative Code chapter 40 pursuant to Executive Order Number 10.

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2. A technical conference is set for 9 a.m. March 13, 2024, in the Utilities Board hearing room, located at 1375 East Court Avenue, Des Moines, Iowa. Interested persons may appear in person or by webinar. Information for attending by webinar can be found on the Utilities Board website on the Hearing and Meeting Calendar webpage.

3. Comments regarding the draft regulatory analysis or the proposed re-promulgated version of chapter 40 shall be filed by March 13, 2024.

**UTILITIES BOARD**

Erik M. Helland 2024.01.31 13:01:14 -06'00'

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Joshua Byrnes Date: 2024.01.31  
12:32:05 -06'00'

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ATTEST:

Jackie Yearington Date: 2024.01.31  
13:17:53 -06'00'

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Sarah Martz Date: 2024.01.31  
12:34:26 -06'00'

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Dated at Des Moines, Iowa, this 31st day of January, 2024.

## Red Tape Review Rule Report (Due: September 1, 2025 )

<b>Department Name:</b>	Iowa Utilities Board	<b>Date:</b>	Jan 31, 2024	<b>Total Rule Count:</b>	5
<b>IAC #:</b>	199	<b>Chapter/ SubChapter/ Rule(s):</b>	chapter 40	<b>Iowa Code Section Authorizing Rule:</b>	Iowa Code sections 476.1 and 476.53
<b>Contact Name:</b>	Gail Beech	<b>Rule #:</b>	Chapter 40	<b>Phone:</b>	515-725-7331

**PLEASE NOTE, THE BOXES BELOW WILL EXPAND AS YOU TYPE**

**What is the intended benefit of the rule?**

The intended benefit of chapter 40 is to establish minimum requirements for any rate-regulated electric utility engaging in the bidding processes used to purchase supply.

**Is the benefit being achieved? Please provide evidence.**

Yes, if rate-regulated utilities choose to engage in a competitive bidding process, chapter 40 establishes the necessary requirements.

**What are the costs incurred by the public to comply with the rule?**

There are no additional costs to the public to comply with the chapter outside of rates paid to the rate-regulated utility.

**What are the costs to the agency or any other agency to implement/enforce the rule?**

There are no additional costs beyond the everyday costs of the agency to implement or enforce this rule. There are no costs to any other agency.

**Do the costs justify the benefits achieved? Please explain.**

Yes, there are minimal costs associated with implementing and enforcing the rules; however, there are benefits to ensure rate-regulated utilities have established minimum requirements for a competitive bidding process.

**Are there less restrictive alternatives to accomplish the benefit?  YES  NO**

**If YES, please list alternative(s) and provide analysis of less restrictive alternatives from other states, if applicable. If NO, please explain.**

Chapter 40 informs utilities of the requirements of the competitive bidding process if the utilities choose to engage in the purchase of supply. Chapter 40 also provides alternatives for the Board to consider in lieu of competitive bidding.

**Does this chapter/rule(s) contain language that is obsolete, outdated, inconsistent, redundant, or un-necessary language, including instances where rule language is duplicative of statutory language? [list chapter/rule number(s) that fall under any of the above categories]**

**PLEASE NOTE, THE BOXES BELOW WILL EXPAND AS YOU TYPE**

**Yes.**  
 40.1 - remove restrictive line  
 40.2 - remove restrictive language  
 40.3 - remove restrictive language  
 40.4 - remove restrictive language  
 40.5 - remove restrictive language

**RULES PROPOSED FOR REPEAL (list rule number[s]):**

None at this time.

**\*RULES PROPOSED FOR RE-PROMULGATION\* (list rule number[s] or include text if available):**

CHAPTER 40  
COMPETITIVE BIDDING PROCESS

**199—40.1(476) General information.**

**40.1(1) Definitions.** The following words and terms when used in these rules will have the meaning indicated below:

“*Affiliate*” means a party that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with a rate-regulated public utility.

“*Arm’s-length transaction*” means a standard of conduct under which unrelated parties, each acting in its own best interest, would carry out a particular transaction. Applied to related parties, a transaction is at arm’s length if the transaction could have been made on the same terms to a disinterested third party in a bargained transaction where each party has substantially the same bargaining power.

“*Control*” means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of an enterprise through ownership, by contract or otherwise.

“*RFP*” means request for proposals.

“*Supply-side resource*” means a resource that can provide electrical energy or capacity to the utility. Supply-side resources include utility-owned generating facilities, and energy or capacity purchased from other utilities and nonutilities. Supply-side resources include modifications to existing generating facilities.

“*Utility*” as defined in this chapter refers to a rate-regulated electric public utility selling to retail customers in Iowa.

**40.1(2) Applicability and purpose.** The rules apply to any rate-regulated electric public utility choosing to establish a competitive bidding process under Iowa Code Supplement section 476.53(3)“c”(2). The rules establish minimum requirements for bidding processes used to purchase supply. Under these rules, bids compete not only with other bids but also with the utility’s own build or lease options. Utilities maintain the right to secure or free up electric capacity and energy through means other than a competitive bidding process.

**40.1(3) General guidelines for resource acquisition.** The utility, as part of any solicitation under its competitive bidding process, will provide estimates of the cost the utility would incur in building or leasing the desired resource consistent with the requirements of 199 IAC 40.3(476).

**40.1(4) Waivers.** The utility may file for a waiver of any or all of these bidding process requirements. In making a decision regarding the granting of a waiver, the board shall consider, among other things, whether the utility is investor-owned, the timing of the solicitation, requirements of other regulatory bodies having jurisdiction over the utility, and whether or not an affiliate of the utility is considering bidding on the project.

**199—40.2(476) Competitive resource acquisition procedure.**

**40.2(1) Procedures.** The utility shall use the following procedures to competitively acquire supply-side resources under its competitive bidding process. If an affiliate of the utility plans to submit bids for supply-side resources it will own or operate, it shall additionally adhere to the procedures specified in 199 IAC 40.4(476).

*a.* If a utility determines that it has a need for additional supply-side resources, it shall make a general public announcement indicating its needs and intentions. If an affiliate of the utility decides to bid once a request for proposals is announced, it will alert the manager at the public utility responsible for the request for proposals and bid process of its intention.

*b.* The utility shall provide a statement to the board indicating whether an affiliate of the utility desires, in the competitive resource acquisition process, to submit bids for supply-side resources it will own or operate.

*c.* If an affiliate of the utility desires to submit bids for supply-side resources, the utility shall select an independent evaluator from the board-approved list of evaluators to perform the functions specified in 199 IAC 40.4(3). The name of the independent evaluator selected for this project shall be filed with the statement to the board required in 199 IAC 40.2(1)“b.” The utility shall provide the estimated cost to utilize the services of the independent evaluator as part of its statement. The independent evaluator shall be paid by the utility.

*d.* If a board-approved list of independent evaluators has not been established under 199 IAC 40.4(3) at the time of the proposed solicitation, the utility shall file a short list of names with the board with qualifications and potential conflicts of

interest as part of its statement required in 199 IAC 40.2(1)“b.” Interested parties and the board shall have 20 days to object to any names on the short list. Absent objection, the utility may proceed with any independent evaluator identified on the list. With objection, the board shall review the evaluators on the list and remove any names that it deems are not independent of the utility or the bidding process, or not qualified to perform the functions of the independent evaluator as identified in 199 IAC 40.4(3). Any board decision to remove names from the list will be issued within 15 days after the end of the objection period. If the board determines none of the persons listed are sufficiently independent or qualified to perform the functions of the independent evaluator, the process will begin again with a new list from the utility.

*e.* The utility shall publish and circulate an RFP that complies with the requirements of 199 IAC 40.5(476). The utility shall make the RFP readily available to interested persons by conspicuously posting the request on its Internet site or other public electronic bulletin board. The RFP shall be filed with the project’s independent evaluator if one is required.

*f.* Within 30 days after publication of the RFP, the utility shall convene a bid conference open to all potential bidders. The bid conference shall be held no less than 20 days after it is noticed. At the bid conference, the utility shall answer questions posed by bidders concerning the RFP. Bidders may request and the utility may hold more than one bid conference if needed. However, in no event shall a bid conference be scheduled later than 30 days beyond the issuance of the RFP. The independent evaluator, if required pursuant to 199 IAC 40.4(3), shall attend the bid conference.

*g.* At the conclusion of the bid conference(s), the utility shall publish and circulate the date for submission of sealed bids. That date shall be no earlier than 30 days following the last bid conference.

*h.* The utility shall file its build or lease cost estimates required by 199 IAC 40.3(476) with the board seven days prior to the deadline for other bidders.

*i.* If an affiliate of the utility desires to submit a bid for supply-side resources it will own or operate, it shall submit its bid to the independent evaluator, the board, and the utility one day prior to the deadline for other bidders.

*j.* After the close of the deadline for the submission of bids, the utility shall commence a review to determine whether the bids are responsive to the minimum bid evaluation criteria specified in the RFP. All responsive bids shall be evaluated in accordance with the bid evaluation criteria specified in the RFP.

*k.* Upon completing its evaluation, the utility shall file with the board a short list of bidders whose bids the utility deems are most reasonable in meeting the resource needs of the utility. The utility’s filing of its short-list selection shall include a report that is sufficiently detailed and rigorous to support those selections, including an evaluation of all bids received and an explanation for why any bidders were excluded from the short list. The utility shall provide copies of the report to all bidders and other interested parties.

*l.* If an independent evaluator was required as part of the solicitation, the independent evaluator shall submit its certification of the fairness of the bidding process at the same time the utility submits its short list to the board.

*m.* Upon filing of the short-list selection and certification from the independent evaluator, if required pursuant to 199 IAC 40.4(3), interested parties shall have 15 days to file a complaint alleging that a bidder was excluded from the short list due to unfair treatment, significant errors in the selection process, or other similar reasons.

*n.* Absent complaints regarding the short-list selection, the utility may select a resource provider from the short list, choose the utility-build or lease option, or combine both options to meet its resource needs, whichever the utility deems most reasonable. Final selection and contract negotiations reside solely with the utility.

**40.2(2) *Evaluation of bids.*** The evaluation of bids submitted in a competitive bidding process must be based on the criteria identified in the utility’s request for proposals. Bids should compete not only with other bids but also with the utility’s own build or lease options, including plant life extensions, upgrades, and modifications.

**40.2(3) *Contract negotiations.*** The utility shall negotiate all contracts. A utility may negotiate a pricing structure that is suitable for the resource, considering such factors as the reliability of the resource, need for security of performance, the availability of other means of ensuring security of performance, the nature of the resource, the level of risk, and other appropriate factors. The utility shall negotiate contract terms that appropriately allocate the risks of future fuel costs and other resource costs between the resource provider and the utility.

**40.2(4) *Utility reporting.*** The utility conducting a bid solicitation under its competitive bidding process shall submit a written report to the board within 45 days of completion of its evaluation of bids. This report shall describe in detail the evaluation of bids and the utility’s comparison of the bids received to its own utility-build or lease options. The report shall also include a copy of the utility’s RFP, a detailed description of the utility’s bid evaluation and selection process, and copies of all bids submitted to the utility in its bid solicitation.

**199—40.3(476) Utility-build or lease cost estimates.**

**40.3(1) *General requirements.*** A utility conducting a bidding process shall develop detailed cost estimates of its own

build or lease options. Those options may include units jointly planned with other companies, plant upgrades or modifications, and plant extensions. The cost estimates shall be detailed and filed on both a project and per-unit basis.

**40.3(2) *Project cost estimates.*** Project cost estimates shall be current and based on the prices likely to be actually quoted by manufacturers and vendors of power plant equipment. The utility-build or lease option shall be structured on an incremental cost basis, including an allocation of common costs incurred for the project's development. The utility shall detail in its filing the cost allocations and methodologies used for overhead costs and any joint facilities used in its estimates.

**40.3(3) *Per-unit cost estimates.*** The utility shall file estimates of per-unit costs in the same measurements or units expected from other bidders on the project sufficient for the board to determine the relative costs of the utility-build or lease option versus like bids received from other bidders. The per-unit cost estimates shall clearly identify the rate-making principles used in calculating these costs.

**40.3(4) *Filing requirements.*** The utility-build or lease cost estimates shall be submitted to the board seven days prior to the utility's receiving competitive bids for new electric capacity and energy.

**199—40.4(476) Utility affiliate bids.**

**40.4(1) *General requirements.*** Any bid prepared by an affiliate of the utility shall comply with the selection criteria specified in the RFP and with board rules governing affiliate transactions (199 IAC 31). The utility may not give preferential treatment or consideration to a bid prepared by an affiliate of the utility. To ensure a level playing field for all bidders, the utility shall comply with its standards of conduct as required by 199 IAC 40.4(2) and shall hire an independent evaluator to ensure compliance with the standards of conduct prior to the drafting of the RFP.

**40.4(2) *Standards of conduct.*** Each utility must establish standards of conduct to ensure that all transactions between the utility and its affiliates are conducted on an arm's-length basis. The utility's standards of conduct shall be filed with the board prior to any solicitation under the utility's competitive bidding process. At a minimum, the utility's standards of conduct shall include the following:

- a. The utility shall maintain full written records and notes of all communications between the utility and the bidding affiliate and between the utility and the independent evaluator, as well as all other bid-related communications.
- b. The utility shall ensure that the bidding affiliate has access only to the same bidding information at the same time as other bidders.
- c. The utility's RFP and evaluation team shall not share with the bidding affiliate any information regarding the request for proposals, standard contract, drafts of either document, information contained in those documents, or any information about the preparation of those documents unless and until such information is available to all other bidders in the solicitation.
- d. The utility shall establish for each RFP and bidding process a single point of contact for all questions about bids and evaluations.
- e. The utility shall keep in a secure location all requests for proposals and contract drafts, related bid documents, any analyses, notes, communications, evaluations and any other written material concerning the RFP, standard contracts, proposals, and all other documents related to the bidding process.
- f. The utility's evaluation team members shall brief management regarding confidential information about the bidding process only on a need-to-know basis. Such briefings will not occur in general staff meetings or other group meetings.
- g. The utility will make all pertinent employees aware of its procedures that must be followed between the public utility and the bidding public utility affiliate or division for confidentiality of RFPs, standard contracts, and other documents pertinent to the bidding process.
- h. The utility shall not share resources with an affiliate bidder unless such resources are also made available to other bidders.
- i. The utility shall not contract on behalf of an affiliate bidder for the provision of services and equipment that are not available to other bidders.
- j. The utility shall not withhold information about Clean Air Act emissions allowances from potential bidders in order to circumvent or hinder the competitive bidding process.
- k. Employees of any bidding affiliate are prohibited from participating in the evaluation process.

**40.4(3) *Independent evaluator.*** The utility shall use an independent evaluator if there is a likelihood that an affiliate's bid may be included among the bids to be evaluated. The utility shall maintain a written record of communications and contacts with the independent evaluator.

a. *Short list of approved independent evaluators.* A board-approved list of independent evaluators shall be compiled using the following process:

- (1) The utility shall file with the board a list with qualifications of at least five independent evaluators it deems to be

appropriate in auditing the bidding and selection process under its competitive bidding process. The utility shall reveal each listed evaluator's associations with the utility or any of its affiliates, divisions, or subsidiaries that could create a potential conflict of interest.

(2) Upon the utility's filing of the list, any interested party shall have 20 days to object to either the independence or the qualifications of one or more evaluators included on the list.

(3) After the time of objection has passed, the board shall approve a final list of potential evaluators that it deems to be independent and qualified to perform the functions of the independent evaluator as specified in 199 IAC 40.4(3) "b."

*b. Functions of the independent evaluator.* The functions of the independent evaluator shall include the following:

(1) Determine whether the utility complied with its standards of conduct as required by 199 IAC 40.4(2).

(2) Determine whether the utility's RFP complies with the minimum requirements specified in 199 IAC 40.5(476).

(3) Determine whether the utility treated and considered its affiliate's bid in the same manner it treated and considered other bids intended to meet the same resource needs.

(4) Determine if the transaction provides the utility's affiliate any unfair competitive advantage by virtue of its affiliation or association with the utility.

(5) Certify with the board at the time the utility files its short list of potential providers that the process was fair and complied with the utility's standards of conduct as required by 199 IAC 40.4(2).

(6) Any other determinations or certifications the evaluator deems relevant.

**199—40.5(476) Request for proposals (RFP).** The request for proposals shall clearly set forth the eligibility and evaluation criteria and shall specify the weight to be given to any price or nonprice selection criteria.

**40.5(1) Minimum evaluation criteria.** The price and nonprice factors selected for evaluation and the weightings attached to each can reasonably vary from utility to utility and project to project. However, the following factors shall be considered for each supply-side project solicitation:

*a.* Level and schedule of required capacity and energy payments;

*b.* Status of project development;

*c.* System fuel diversity;

*d.* Reliability and performance measures;

*e.* Firm versus variable or indexed pricing;

*f.* Dispatchability;

*g.* Project location and effect on the transmission grid;

*h.* Use of Iowa fuels, manpower, and other state resources;

*i.* Benefits to be derived by the industries and communities associated with a particular project;

*j.* Demonstrated financial viability of the project and the developer;

*k.* Developer's prior experience in the field.

**40.5(2) Contents of the request for proposals.** The RFP shall contain sufficient information to apprise potential bidders of the utility's criteria for evaluation of bids received as part of the competitive resource acquisition process specified in 199 IAC 40.2(476). This information shall include the bid evaluation criteria, including the weights to be assigned to each criterion, that the utility plans to use in ranking the bids received. Specific information associated with the bid evaluation criteria provided by the utility shall include, but not be limited to, the following:

*a.* Preferred fuel types;

*b.* The extent to which additional supply-side resources must be located in certain geographic areas due to transmission constraints, local load condition, permitting constraints, or other factors;

*c.* Important transmission constraints on the utility's system and on adjoining utility systems, and reasonable estimates of transmission costs for supply-side resources located in different areas;

*d.* The extent and degree to which supply-side resources must be dispatchable, including the requirement, if any, that supply-side resources be able to operate under automatic dispatch control;

*e.* Supply-side resource reliability requirements and objectives, and the method(s) that will be used to measure the achievement of those requirements and objectives, including the contribution of individual supply-side resources;

*f.* The desirability of firm pricing and contract terms of various durations;

*g.* The minimum bid evaluation criteria that must be met by a bidder for a bid to be considered responsive to the RFP. The utility shall be reasonable in its specification of minimum bid evaluation criteria and shall not artificially limit the pool of bidders through unreasonable or excessively restrictive minimum criteria;

*h.* The utility's proposed standard contract for the acquisition of supply-side resources.



**ATTACHMENT A**

**199—40.6(476) Complaints.** The board shall resolve disputes between a utility and a bidder that may arise as a result of implementation of the bidding process. The independent evaluator shall participate by providing information on the bidding process including the selection of the winning bid. A complaint by a bidder concerning the utility’s decisions on the acquisition of resources in a solicitation must be filed within 15 days of the filing of the short-list selection with the board.

These rules are intended to implement Iowa Code section 476.1 and Iowa Code Supplement section 476.53.

[Filed 3/15/02, Notice 8/22/01—published 4/3/02, effective 5/8/02]

***\*For rules being re-promulgated with changes, please attach a document with suggested changes, if available.***

**METRICS**

<b>Total number of rules repealed:</b>	<b>0</b>
<b>Proposed word count reduction after repeal and/or re-promulgation</b>	<b>209</b>
<b>Proposed number of restrictive terms eliminated after repeal and/or re-promulgation</b>	<b>48</b>

**ARE THERE ANY RULES YOU WOULD RECOMMEND BE CODIFIED IN STATUTE?**

**Not at this time.**

**Regulatory Analysis**

**TEXT BOXES WILL EXPAND AS YOU TYPE**

**Agency Name** Iowa Utilities Board **Rule #** 199 IAC Chapter 40

**Iowa Code Section Authorizing Rule** Iowa Code sections 476.1 and 476.53

**State or Federal Law(s) Implemented by the Rule** Iowa Code sections 476.1 and 476.53

**Public Hearing**

A public hearing at which persons may present their views orally or in writing will be held as follows:

Date/Time: 03/13/2024 9:00 a.m. - 11:00 a.m.

Location: Iowa Utilities Board Hearing Room, 1375 East Court Avenue, Des Moines, Iowa 50319

Any interested person may submit written comments concerning this regulatory analysis. Written comments in response to this regulatory analysis must be received by the Department no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Contact Name

IT Support

Address

1375 E. Court Avenue, Des Moines, Iowa 50319

Email and/or phone number

515.725.7300 ITsupport@iub.iowa.gov

**Purpose and summary of proposed rule:**

To establish minimum requirements for any rate-regulated electric utility engaging in the bidding processes used to purchase supply.

**Analysis of Impact of Proposed Rule**

1. Persons affected by the proposed rule

- Classes of persons that will bear the costs of the proposed rule:

Rate-regulated utilities engaging in the competitive bidding process.

- Classes of persons that will benefit from the proposed rule:

Rate-regulated utilities engaging in the competitive bidding process.

## Regulatory Analysis

2. Impact of the proposed rule, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred

- Quantitative description of impact:

This is part of the everyday work of the Board so there is no additional impact to the Board, economic or otherwise.

- Qualitative description of impact:

This chapter ensures that utilities have accurate and detailed information if they choose to engage in the competitive bidding process.

3. Costs to the state

- Implementation and enforcement costs borne by the agency or any other agency:

There are no additional costs to any agency other than the normal every day costs of operation of the Board.

- Anticipated effect on state revenues:

There is no anticipated effect on state revenues.

4. Comparison of the costs and benefits of the proposed rule to the costs and benefits of inaction

There is a benefit in ensuring rate-regulated utilities are aware of the processes and procedures of the competitive bidding process.

5. Determination if less costly methods or less intrusive methods exist for achieving the purpose of the proposed rule

The Board does not believe there are any less costly methods of addressing the purpose of this rule.

6. Alternative methods considered by the agency

- Description of any alternative methods that were seriously considered by the agency:

Inaction.

- Reasons why they were rejected in favor of the proposed rule:

The proposed rule provides directives for rate-regulated utilities who are engaging in the competitive bidding process.

## Regulatory Analysis

### Small Business Impact

If the rule will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rule on small business:

- Establish less stringent compliance or reporting requirements in the rule for small business.
- Establish less stringent schedules or deadlines in the rule for compliance or reporting requirements for small business.
- Consolidate or simplify the rule’s compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rule for small business.
- Exempt small business from any or all requirements of the rule.

If legal and feasible, how does the rule use a method discussed above to reduce the substantial impact on small business?

The Board does not anticipate a substantial impact on small business.

### Text of Proposed Rule:

CHAPTER 40  
COMPETITIVE BIDDING PROCESS

**199—40.1(476) General information.**

**40.1(1) Definitions.** The following words and terms when used in these rules will have the meaning indicated below:

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“*Utility*” as defined in this chapter refers to a rate-regulated electric public utility selling to retail customers in Iowa.

**40.1(2) Applicability and purpose.** The rules apply to any rate-regulated electric public utility choosing to establish a competitive bidding process under Iowa Code Supplement section 476.53(3)“c”(2). The rules establish minimum requirements for bidding processes used to purchase supply. Under these rules, bids

## Regulatory Analysis

compete not only with other bids but also with the utility's own build or lease options. Utilities maintain the right to secure or free up electric capacity and energy through means other than a competitive bidding process.

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**40.1(4) *Waivers.*** The utility may file for a waiver of any or all of these bidding process requirements. In making a decision regarding the granting of a waiver, the board shall consider, among other things, whether the utility is investor-owned, the timing of the solicitation, requirements of other regulatory bodies having jurisdiction over the utility, and whether or not an affiliate of the utility is considering bidding on the project.

### **199—40.2(476) Competitive resource acquisition procedure.**

**40.2(1) *Procedures.*** The utility shall use the following procedures to competitively acquire supply-side resources under its competitive bidding process. If an affiliate of the utility plans to submit bids for supply-side resources it will own or operate, it shall additionally adhere to the procedures specified in 199 IAC 40.4(476).

*a.* If a utility determines that it has a need for additional supply-side resources, it shall make a general public announcement indicating its needs and intentions. If an affiliate of the utility decides to bid once a request for proposals is announced, it will alert the manager at the public utility responsible for the request for proposals and bid process of its intention.

*b.* The utility shall provide a statement to the board indicating whether an affiliate of the utility desires, in the competitive resource acquisition process, to submit bids for supply-side resources it will own or operate.

*c.* If an affiliate of the utility desires to submit bids for supply-side resources, the utility shall select an independent evaluator from the board-approved list of evaluators to perform the functions specified in 199 IAC 40.4(3). The name of the independent evaluator selected for this project shall be filed with the statement to the board required in 199 IAC 40.2(1) "b." The utility shall provide the estimated cost to utilize the services of the independent evaluator as part of its statement. The independent evaluator shall be paid by the utility.

*d.* If a board-approved list of independent evaluators has not been established under 199 IAC 40.4(3) at the time of the proposed solicitation, the utility shall file a short list of names with the board with qualifications and potential conflicts of interest as part of its statement required in 199 IAC 40.2(1) "b." Interested parties and the board shall have 20 days to object to any names on the short list. Absent objection, the utility may proceed with any independent evaluator identified on the list. With objection, the board shall review the evaluators on the list and remove any names that it deems are not independent of the utility or the bidding process, or not qualified to perform the functions of the independent evaluator as identified in 199 IAC 40.4(3). Any board decision to remove names from the list will be issued within 15 days after the end of the objection period. If the board determines none of the persons listed are sufficiently independent or qualified to perform the functions of the independent evaluator, the process will begin again with a new list from the utility.

*e.* The utility shall publish and circulate an RFP that complies with the requirements of 199 IAC 40.5(476). The utility shall make the RFP readily available to interested persons by conspicuously posting the request on its Internet site or other public electronic bulletin board. The RFP shall be filed with the project's independent evaluator if one is required.

*f.* Within 30 days after publication of the RFP, the utility shall convene a bid conference open to all potential bidders. The bid conference shall be held no less than 20 days after it is noticed. At the bid conference, the utility shall answer questions posed by bidders concerning the RFP. Bidders may request and the utility may hold more than one bid conference if needed. However, in no event shall a bid

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conference be scheduled later than 30 days beyond the issuance of the RFP. The independent evaluator, if required pursuant to 199 IAC 40.4(3), shall attend the bid conference.

*g.* At the conclusion of the bid conference(s), the utility shall publish and circulate the date for submission of sealed bids. That date shall be no earlier than 30 days following the last bid conference.

*h.* The utility shall file its build or lease cost estimates required by 199 IAC 40.3(476) with the board seven days prior to the deadline for other bidders.

*i.* If an affiliate of the utility desires to submit a bid for supply-side resources it will own or operate, it shall submit its bid to the independent evaluator, the board, and the utility one day prior to the deadline for other bidders.

*j.* After the close of the deadline for the submission of bids, the utility shall commence a review to determine whether the bids are responsive to the minimum bid evaluation criteria specified in the RFP. All responsive bids shall be evaluated in accordance with the bid evaluation criteria specified in the RFP.

*k.* Upon completing its evaluation, the utility shall file with the board a short list of bidders whose bids the utility deems are most reasonable in meeting the resource needs of the utility. The utility's filing of its short-list selection shall include a report that is sufficiently detailed and rigorous to support those selections, including an evaluation of all bids received and an explanation for why any bidders were excluded from the short list. The utility shall provide copies of the report to all bidders and other interested parties.

*l.* If an independent evaluator was required as part of the solicitation, the independent evaluator shall submit its certification of the fairness of the bidding process at the same time the utility submits its short list to the board.

*m.* Upon filing of the short-list selection and certification from the independent evaluator, if required pursuant to 199 IAC 40.4(3), interested parties shall have 15 days to file a complaint alleging that a bidder was excluded from the short list due to unfair treatment, significant errors in the selection process, or other similar reasons.

*n.* Absent complaints regarding the short-list selection, the utility may select a resource provider from the short list, choose the utility-build or lease option, or combine both options to meet its resource needs, whichever the utility deems most reasonable. Final selection and contract negotiations reside solely with the utility.

**40.2(2) *Evaluation of bids.*** The evaluation of bids submitted in a competitive bidding process must be based on the criteria identified in the utility's request for proposals. Bids should compete not only with other bids but also with the utility's own build or lease options, including plant life extensions, upgrades, and modifications.

**40.2(3) *Contract negotiations.*** The utility shall negotiate all contracts. A utility may negotiate a pricing structure that is suitable for the resource, considering such factors as the reliability of the resource, need for security of performance, the availability of other means of ensuring security of performance, the nature of the resource, the level of risk, and other appropriate factors. The utility shall negotiate contract terms that appropriately allocate the risks of future fuel costs and other resource costs between the resource provider and the utility.

**40.2(4) *Utility reporting.*** The utility conducting a bid solicitation under its competitive bidding process shall submit a written report to the board within 45 days of completion of its evaluation of bids. This report shall describe in detail the evaluation of bids and the utility's comparison of the bids received to its own utility-build or lease options. The report shall also include a copy of the utility's RFP, a detailed description of the utility's bid evaluation and selection process, and copies of all bids submitted to the utility in its bid solicitation.

### **199—40.3(476) Utility-build or lease cost estimates.**

**40.3(1) *General requirements.*** A utility conducting a bidding process shall develop detailed cost estimates of its own build or lease options. Those options may include units jointly planned with other companies, plant upgrades or modifications, and plant extensions. The cost estimates shall be detailed and

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filed on both a project and per-unit basis.

**40.3(2) *Project cost estimates.*** Project cost estimates shall be current and based on the prices likely to be actually quoted by manufacturers and vendors of power plant equipment. The utility-build or lease option shall be structured on an incremental cost basis, including an allocation of common costs incurred for the project's development. The utility shall detail in its filing the cost allocations and methodologies used for overhead costs and any joint facilities used in its estimates.

**40.3(3) *Per-unit cost estimates.*** The utility shall file estimates of per-unit costs in the same measurements or units expected from other bidders on the project sufficient for the board to determine the relative costs of the utility-build or lease option versus like bids received from other bidders. The per-unit cost estimates shall clearly identify the rate-making principles used in calculating these costs.

**40.3(4) *Filing requirements.*** The utility-build or lease cost estimates shall be submitted to the board seven days prior to the utility's receiving competitive bids for new electric capacity and energy.

### **199—40.4(476) Utility affiliate bids.**

**40.4(1) *General requirements.*** Any bid prepared by an affiliate of the utility shall comply with the selection criteria specified in the RFP and with board rules governing affiliate transactions (199 IAC 31). The utility may not give preferential treatment or consideration to a bid prepared by an affiliate of the utility. To ensure a level playing field for all bidders, the utility shall comply with its standards of conduct as required by 199 IAC 40.4(2) and shall hire an independent evaluator to ensure compliance with the standards of conduct prior to the drafting of the RFP.

**40.4(2) *Standards of conduct.*** Each utility must establish standards of conduct to ensure that all transactions between the utility and its affiliates are conducted on an arm's-length basis. The utility's standards of conduct shall be filed with the board prior to any solicitation under the utility's competitive bidding process. At a minimum, the utility's standards of conduct shall include the following:

*a.* The utility shall maintain full written records and notes of all communications between the utility and the bidding affiliate and between the utility and the independent evaluator, as well as all other bid-related communications.

*b.* The utility shall ensure that the bidding affiliate has access only to the same bidding information at the same time as other bidders.

*c.* The utility's RFP and evaluation team shall not share with the bidding affiliate any information regarding the request for proposals, standard contract, drafts of either document, information contained in those documents, or any information about the preparation of those documents unless and until such information is available to all other bidders in the solicitation.

*d.* The utility shall establish for each RFP and bidding process a single point of contact for all questions about bids and evaluations.

*e.* The utility shall keep in a secure location all requests for proposals and contract drafts, related bid documents, any analyses, notes, communications, evaluations and any other written material concerning the RFP, standard contracts, proposals, and all other documents related to the bidding process.

*f.* The utility's evaluation team members shall brief management regarding confidential information about the bidding process only on a need-to-know basis. Such briefings will not occur in general staff meetings or other group meetings.

*g.* The utility will make all pertinent employees aware of its procedures that must be followed between the public utility and the bidding public utility affiliate or division for confidentiality of RFPs, standard contracts, and other documents pertinent to the bidding process.

*h.* The utility shall not share resources with an affiliate bidder unless such resources are also made available to other bidders.

*i.* The utility shall not contract on behalf of an affiliate bidder for the provision of services and equipment that are not available to other bidders.

*j.* The utility shall not withhold information about Clean Air Act emissions allowances from potential

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bidders in order to circumvent or hinder the competitive bidding process.

*k.* Employees of any bidding affiliate are prohibited from participating in the evaluation process.

**40.4(3) Independent evaluator.** The utility shall use an independent evaluator if there is a likelihood that an affiliate's bid may be included among the bids to be evaluated. The utility shall maintain a written record of communications and contacts with the independent evaluator.

*a. Short list of approved independent evaluators.* A board-approved list of independent evaluators shall be compiled using the following process:

(1) The utility shall file with the board a list with qualifications of at least five independent evaluators it deems to be appropriate in auditing the bidding and selection process under its competitive bidding process. The utility shall reveal each listed evaluator's associations with the utility or any of its affiliates, divisions, or subsidiaries that could create a potential conflict of interest.

(2) Upon the utility's filing of the list, any interested party shall have 20 days to object to either the independence or the qualifications of one or more evaluators included on the list.

(3) After the time of objection has passed, the board shall approve a final list of potential evaluators that it deems to be independent and qualified to perform the functions of the independent evaluator as specified in 199 IAC 40.4(3) "b."

*b. Functions of the independent evaluator.* The functions of the independent evaluator shall include the following:

(1) Determine whether the utility complied with its standards of conduct as required by 199 IAC 40.4(2).

(2) Determine whether the utility's RFP complies with the minimum requirements specified in 199 IAC 40.5(476).

(3) Determine whether the utility treated and considered its affiliate's bid in the same manner it treated and considered other bids intended to meet the same resource needs.

(4) Determine if the transaction provides the utility's affiliate any unfair competitive advantage by virtue of its affiliation or association with the utility.

(5) Certify with the board at the time the utility files its short list of potential providers that the process was fair and complied with the utility's standards of conduct as required by 199 IAC 40.4(2).

(6) Any other determinations or certifications the evaluator deems relevant.

**199—40.5(476) Request for proposals (RFP).** The request for proposals shall clearly set forth the eligibility and evaluation criteria and shall specify the weight to be given to any price or nonprice selection criteria.

**40.5(1) Minimum evaluation criteria.** The price and nonprice factors selected for evaluation and the weightings attached to each can reasonably vary from utility to utility and project to project. However, the following factors shall be considered for each supply-side project solicitation:

*a.* Level and schedule of required capacity and energy payments;

*b.* Status of project development;

*c.* System fuel diversity;

*d.* Reliability and performance measures;

*e.* Firm versus variable or indexed pricing;

*f.* Dispatchability;

*g.* Project location and effect on the transmission grid;

*h.* Use of Iowa fuels, manpower, and other state resources;

*i.* Benefits to be derived by the industries and communities associated with a particular project;

*j.* Demonstrated financial viability of the project and the developer;

*k.* Developer's prior experience in the field.

**40.5(2) Contents of the request for proposals.** The RFP shall contain sufficient information to apprise potential bidders of the utility's criteria for evaluation of bids received as part of the competitive resource



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acquisition process specified in 199 IAC 40.2(476). This information shall include the bid evaluation criteria, including the weights to be assigned to each criterion, that the utility plans to use in ranking the bids received. Specific information associated with the bid evaluation criteria provided by the utility shall include, but not be limited to, the following:

- a.* Preferred fuel types;
- b.* The extent to which additional supply-side resources must be located in certain geographic areas due to transmission constraints, local load condition, permitting constraints, or other factors;
- c.* Important transmission constraints on the utility's system and on adjoining utility systems, and reasonable estimates of transmission costs for supply-side resources located in different areas;
- d.* The extent and degree to which supply-side resources must be dispatchable, including the requirement, if any, that supply-side resources be able to operate under automatic dispatch control;
- e.* Supply-side resource reliability requirements and objectives, and the method(s) that will be used to measure the achievement of those requirements and objectives, including the contribution of individual supply-side resources;
- f.* The desirability of firm pricing and contract terms of various durations;
- g.* The minimum bid evaluation criteria that must be met by a bidder for a bid to be considered responsive to the RFP. The utility shall be reasonable in its specification of minimum bid evaluation criteria and shall not artificially limit the pool of bidders through unreasonable or excessively restrictive minimum criteria;
- h.* The utility's proposed standard contract for the acquisition of supply-side resources.

**199—40.6(476) Complaints.** The board shall resolve disputes between a utility and a bidder that may arise as a result of implementation of the bidding process. The independent evaluator shall participate by providing information on the bidding process including the selection of the winning bid. A complaint by a bidder concerning the utility's decisions on the acquisition of resources in a solicitation must be filed within 15 days of the filing of the short-list selection with the board.

These rules are intended to implement Iowa Code section 476.1 and Iowa Code Supplement section 476.53.

[Filed 3/15/02, Notice 8/22/01—published 4/3/02, effective 5/8/02]

CHAPTER 40  
COMPETITIVE BIDDING PROCESS

**199—40.1(476) General information.**

**40.1(1) Definitions.** The following words and terms when used in these rules will have the meaning indicated below:

“*Affiliate*” means a party that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with a rate-regulated public utility.

“*Arm’s-length transaction*” means a standard of conduct under which unrelated parties, each acting in its own best interest, would carry out a particular transaction. Applied to related parties, a transaction is at arm’s length if the transaction could have been made on the same terms to a disinterested third party in a bargained transaction where each party has substantially the same bargaining power.

“*Control*” means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of an enterprise through ownership, by contract or otherwise.

“*RFP*” means request for proposals.

“*Supply-side resource*” means a resource that can provide electrical energy or capacity to the utility. Supply-side resources include utility-owned generating facilities, and energy or capacity purchased from other utilities and nonutilities. Supply-side resources include modifications to existing generating facilities.

“*Utility*” as defined in this chapter refers to a rate-regulated electric public utility selling to retail customers in Iowa.

**40.1(2) Applicability and purpose.** The rules establish a competitive bidding process under Iowa Code section 476.53(3)(c)(2). A rate-regulated utility choosing to comply with these minimum requirements for bidding processes used to purchase supply will be deemed to have demonstrated to the board that it has considered other sources for long-term electric supply for purposes of 476.53(3)(c)(2). Utilities maintain the right to secure or free up electric capacity and energy through means other than a competitive bidding process.

**40.1(3) General guidelines for resource acquisition.** The utility, as part of any solicitation under its competitive bidding process, will provide estimates of the cost the utility would incur in building or leasing the desired resource consistent with the requirements of 199 IAC 40.3(476).

**40.1(4) Waivers.** The utility may file for a waiver of any or all of these bidding process requirements. In making a decision regarding the granting of a waiver, the board will consider, among other things, whether the utility is investor-owned, the timing of the solicitation, requirements of other regulatory bodies having jurisdiction over the utility, and whether or not an affiliate of the utility is considering bidding on the project.

**199—40.2(476) Competitive resource acquisition procedure.**

**40.2(1) Procedures.** A utility using the following procedures to competitively acquire supply-side resources under its competitive bidding process will be deemed to have considered other sources for long-term electric supply. If an affiliate of the utility plans to submit bids for supply-side resources it will own or operate, it shall adhere to the procedures specified in 199 IAC 40.4(476).

a. The Utility makes a general public announcement indicating its needs and intentions. If an affiliate of the utility decides to bid once a request for proposals is announced, it will alert the manager at the public utility responsible for the request for proposals and bid process of its intention.

b. The utility provides a statement to the board indicating whether an affiliate of the utility desires, in the competitive resource acquisition process, to submit bids for supply-side resources it will own or operate.

c. If an affiliate of the utility desires to submit bids for supply-side resources, the utility shall select an independent evaluator from the board-approved list of evaluators to perform the functions specified in 199 IAC 40.4(3). The name of the independent evaluator selected for this project is to be filed with the statement to the board required in 199 IAC 40.2(1) “b.” The utility shall provide the estimated cost

to utilize the services of the independent evaluator as part of its statement. The independent evaluator shall be paid by the utility.

*d.* If a board-approved list of independent evaluators has not been established under 199 IAC 40.4(3) at the time of the proposed solicitation, the utility may file a short list of names with the board with qualifications and potential conflicts of interest as part of its statement required in 199 IAC 40.2(1) "b." Interested parties and the board have 20 days to object to any names on the short list. Absent objection, the utility may proceed with any independent evaluator identified on the list. With objection, the board may review the evaluators on the list and remove any names that it deems are not independent of the utility or the bidding process, or not qualified to perform the functions of the independent evaluator as identified in 199 IAC 40.4(3). Any board decision to remove names from the list will be issued within 15 days after the end of the objection period. If the board determines none of the persons listed are sufficiently independent or qualified to perform the functions of the independent evaluator, the process will begin again with a new list from the utility.

*e.* The utility publishes and circulates an RFP that complies with the requirements of 199 IAC 40.5(476). The utility makes the RFP readily available to interested persons by conspicuously posting the request on its Internet site or other public electronic bulletin board. The RFP is filed with the project's independent evaluator if one is required.

*f.* Within 30 days after publication of the RFP, the utility convenes a bid conference open to all potential bidders. The bid conference shall be held no less than 20 days after it is noticed. At the bid conference, the utility answers questions posed by bidders concerning the RFP. Bidders may request and the utility may hold more than one bid conference if needed. However, in no event will a bid conference be scheduled later than 30 days beyond the issuance of the RFP. The independent evaluator, if required pursuant to 199 IAC 40.4(3), must attend the bid conference.

*g.* At the conclusion of the bid conference(s), the utility publishes and circulates the date for submission of sealed bids. That date will be no earlier than 30 days following the last bid conference.

*h.* The utility files its build or lease cost estimates required by 199 IAC 40.3(476) with the board seven days prior to the deadline for other bidders.

*i.* If an affiliate of the utility desires to submit a bid for supply-side resources it will own or operate, it submits its bid to the independent evaluator, the board, and the utility one day prior to the deadline for other bidders.

*j.* After the close of the deadline for the submission of bids, the utility commences a review to determine whether the bids are responsive to the minimum bid evaluation criteria specified in the RFP. All responsive bids are evaluated in accordance with the bid evaluation criteria specified in the RFP.

*k.* Upon completing its evaluation, the utility files with the board a short list of bidders whose bids the utility deems are most reasonable in meeting the resource needs of the utility. The utility's filing of its short-list selection includes a report that is sufficiently detailed and rigorous to support those selections, including an evaluation of all bids received and an explanation for why any bidders were excluded from the short list. The utility provides copies of the report to all bidders and other interested parties.

*l.* If an independent evaluator was required as part of the solicitation, the independent evaluator submits its certification of the fairness of the bidding process at the same time the utility submits its short list to the board.

*m.* Upon filing of the short-list selection and certification from the independent evaluator, if required pursuant to 199 IAC 40.4(3), interested parties have 15 days to file a complaint alleging that a bidder was excluded from the short list due to unfair treatment, significant errors in the selection process, or other similar reasons.

*n.* Absent complaints regarding the short-list selection, the utility selects a resource provider from the short list, chooses the utility-build or lease option, or combines both options to meet its resource needs, whichever the utility deems most reasonable. Final selection and contract negotiations reside solely with the utility.

**40.2(2)** *Evaluation of bids.* The evaluation of bids submitted in a competitive bidding process are

based on the criteria identified in the utility's request for proposals. Bids should compete not only with other bids but also with the utility's own build or lease options, including plant life extensions, upgrades, and modifications.

**40.2(3) *Contract negotiations.*** The utility shall negotiate all contracts. A utility may negotiate a pricing structure that is suitable for the resource, considering such factors as the reliability of the resource, need for security of performance, the availability of other means of ensuring security of performance, the nature of the resource, the level of risk, and other appropriate factors. The utility shall negotiate contract terms that appropriately allocate the risks of future fuel costs and other resource costs between the resource provider and the utility.

**40.2(4) *Utility reporting.*** The utility choosing to conduct a bid solicitation under its competitive bidding process shall submit a written report to the board within 45 days of completion of its evaluation of bids. This report is to describe in detail the evaluation of bids and the utility's comparison of the bids received to its own utility-build or lease options. The report should also include a copy of the utility's RFP, a detailed description of the utility's bid evaluation and selection process, and copies of all bids submitted to the utility in its bid solicitation.

**199—40.3(476) Utility-build or lease cost estimates.**

**40.3(1) *General requirements.*** A utility intending its bidding process to satisfy the requirements of 476.53(3)(c)(2) shall develop detailed cost estimates of its own build or lease options. Those options may include units jointly planned with other companies, plant upgrades or modifications, and plant extensions. The cost estimates shall be detailed and filed on both a project and per-unit basis.

**40.3(2) *Project cost estimates.*** Project cost estimates shall be current and based on the prices likely to be actually quoted by manufacturers and vendors of power plant equipment. The utility-build or lease option shall be structured on an incremental cost basis, including an allocation of common costs incurred for the project's development. The utility shall detail in its filing the cost allocations and methodologies used for overhead costs and any joint facilities used in its estimates.

**40.3(3) *Per-unit cost estimates.*** The utility shall file estimates of per-unit costs in the same measurements or units expected from other bidders on the project sufficient for the board to determine the relative costs of the utility-build or lease option versus like bids received from other bidders. The per-unit cost estimates are to clearly identify the rate-making principles used in calculating these costs.

**40.3(4) *Filing requirements.*** The utility-build or lease cost estimates shall be submitted to the board seven days prior to the utility's receiving competitive bids for new electric capacity and energy.

**199—40.4(476) Utility affiliate bids.**

**40.4(1) *General requirements.*** Any bid prepared by an affiliate of the utility shall comply with the selection criteria specified in the RFP and with board rules governing affiliate transactions (199 IAC 31). The utility may not give preferential treatment or consideration to a bid prepared by an affiliate of the utility. To ensure a level playing field for all bidders, the utility shall comply with its standards of conduct as required by 199 IAC 40.4(2) and shall hire an independent evaluator to ensure compliance with the standards of conduct prior to the drafting of the RFP.

**40.4(2) *Standards of conduct.*** Each utility must establish standards of conduct to ensure that all transactions between the utility and its affiliates are conducted on an arm's-length basis. The utility's standards of conduct shall be filed with the board prior to any solicitation under the utility's competitive bidding process. At a minimum, the utility's standards of conduct shall include the following:

*a.* The maintenance of full written records and notes of all communications between the utility and the bidding affiliate and between the utility and the independent evaluator, as well as all other bid-related communications.

*b.* Assurance that the bidding affiliate has access only to the same bidding information at the same time as other bidders.

*c.* Screening of the bidding affiliate from any information regarding the request for proposals, standard contract, drafts of either document, information contained in those documents, or any information about the preparation of those documents unless and until such information is available to

all other bidders in the solicitation.

*d.* The establishment of a single point of contact for all questions about bids and evaluations.

*e. f.* The briefing of management regarding confidential information about the bidding process only on a need-to-know basis. Such briefings will not occur in general staff meetings or other group meetings.

*g.* The education of all pertinent employees aware of its procedures that must be followed between the public utility and the bidding public utility affiliate or division for confidentiality of RFPs, standard contracts, and other documents pertinent to the bidding process.

*h.* Equal treatment of affiliate bidders and non-affiliate bidders in regard to resources, contracting for the provision of services, the availability of information.

**40.4(3) Independent evaluator.** The utility shall use an independent evaluator if there is a likelihood that an affiliate's bid may be included among the bids to be evaluated. The utility is to maintain a written record of communications and contacts with the independent evaluator.

*a. Short list of approved independent evaluators.* A board-approved list of independent evaluators shall be compiled using the following process:

(1) The utility may file with the board a list with qualifications of at least five independent evaluators it deems to be appropriate in auditing the bidding and selection process under its competitive bidding process. The utility is to reveal each listed evaluator's associations with the utility or any of its affiliates, divisions, or subsidiaries that could create a potential conflict of interest.

(2) Upon the utility's filing of the list, any interested party has 20 days to object to either the independence or the qualifications of one or more evaluators included on the list.

(3) After the time of objection has passed, the board may approve a final list of potential evaluators that it deems to be independent and qualified to perform the functions of the independent evaluator as specified in 199 IAC 40.4(3) "b."

*b. Functions of the independent evaluator.* The functions of the independent evaluator shall include the following:

(1) Determine whether the utility complied with its standards of conduct as required by 199 IAC 40.4(2).

(2) Determine whether the utility's RFP complies with the minimum requirements specified in 199 IAC 40.5(476).

(3) Determine whether the utility treated and considered its affiliate's bid in the same manner it treated and considered other bids intended to meet the same resource needs.

(4) Determine if the transaction provides the utility's affiliate any unfair competitive advantage by virtue of its affiliation or association with the utility.

(5) Certify with the board at the time the utility files its short list of potential providers that the process was fair and complied with the utility's standards of conduct as required by 199 IAC 40.4(2).

(6) Any other determinations or certifications the evaluator deems relevant.

**199—40.5(476) Request for proposals (RFP).** A request for proposals intended to be compliant with this Chapter shall clearly set forth the eligibility and evaluation criteria and specify the weight to be given to any price or nonprice selection criteria.

**40.5(1) Minimum evaluation criteria.** The price and nonprice factors selected for evaluation and the weightings attached to each can reasonably vary from utility to utility and project to project. However, the following factors shall be considered for each supply-side project solicitation:

*a.* Level and schedule of required capacity and energy payments;

*b.* Status of project development;

*c.* System fuel diversity;

*d.* Reliability and performance measures;

*e.* Firm versus variable or indexed pricing;

*f.* Dispatchability;

- g. Project location and effect on the transmission grid;
- h. Use of Iowa fuels, manpower, and other state resources;
- i. Benefits to be derived by the industries and communities associated with a particular project;
- j. Demonstrated financial viability of the project and the developer;
- k. Developer's prior experience in the field.

**40.5(2)** *Contents of the request for proposals.* The RFP shall contain sufficient information to apprise potential bidders of the utility's criteria for evaluation of bids received as part of the competitive resource acquisition process specified in 199 IAC 40.2(476). This information includes the bid evaluation criteria, including the weights to be assigned to each criterion, that the utility plans to use in ranking the bids received. Specific information associated with the bid evaluation criteria provided by the utility shall include, but not be limited to, the following:

- a. Preferred fuel types;
- b. The extent to which additional supply-side resources must be located in certain geographic areas due to transmission constraints, local load condition, permitting constraints, or other factors;
- c. Important transmission constraints on the utility's system and on adjoining utility systems, and reasonable estimates of transmission costs for supply-side resources located in different areas;
- d. The extent and degree to which supply-side resources must be dispatchable, including the requirement, if any, that supply-side resources be able to operate under automatic dispatch control;
- e. Supply-side resource reliability requirements and objectives, and the method(s) that will be used to measure the achievement of those requirements and objectives, including the contribution of individual supply-side resources;
- f. The desirability of firm pricing and contract terms of various durations;
- g. The minimum bid evaluation criteria that must be met by a bidder for a bid to be considered responsive to the RFP. The utility shall be reasonable in its specification of minimum bid evaluation criteria and not artificially limit the pool of bidders through unreasonable or excessively restrictive minimum criteria;
- h. The utility's proposed standard contract for the acquisition of supply-side resources.

These rules are intended to implement Iowa Code section 476.1 and Iowa Code Supplement section 476.53.

[Filed 3/15/02, Notice 8/22/01—published 4/3/02, effective 5/8/02]