

Maine Public Utilities Commission



Report on Competitive Procurement Methods for Purchases by Transmission and Distribution Utilities

**Presented to the
Joint Standing Committee on
Energy, Utilities and Technology
February 27, 2023**

I. INTRODUCTION

During its 2022 session, the Legislature enacted An Act Regarding Utility Accountability and Grid Planning for Maine's Clean Energy Future. [P.L. 2021, ch. 702](#)¹ (Act). Section 12 of the Act requires the Commission to initiate an Inquiry to assess the use of competitive procurement methods for purchases by transmission and distribution (T&D) utilities of “specific goods and services of a quantity that in the aggregate could reasonably impose significant costs to ratepayers.”

Specifically, the Act states that the Inquiry must consider:

the activities for which competitive procurement methods may apply, exceptions to competitive procurement methods, the cost-effectiveness of requiring the use of competitive procurement methods and any other considerations the commission finds are necessary to assess the use of competitive procurement methods.

Section 12 of the Act also provides that the Commission may adopt rules regarding procurement methods for T&D utilities and requires the Commission to submit a report regarding the Inquiry to the Legislation by February 27, 2023.

The Commission, hereby, submits this Report to the Legislature on the use by T&D utilities of competitive procurement methods for purchases of goods and services.

II. INQUIRY

To gather the information necessary to conduct the required review, The Commission, on July 28, 2022, initiated an Inquiry into the use of competitive procurement methods for purchases by transmission and distribution utilities of goods and services as required by the Act. *Notice of Inquiry* (Docket No. [2022-00189](#)). Through the Notice of Inquiry, the Commission requested that all T&D utilities² provide the following:

1. A detailed discussion of how the utility determines whether to conduct a competitive procurement for goods and services as opposed to other methods to obtain good and services including but not limited to the following:
 - a. Instances in which the utility uses a procurement process, and the factors that dictate a procurement process will be used;
 - b. Instances in which the utility foregoes a procurement process, and the factors that dictate that a procurement will not be used; and

¹ L.D. 1959.

² The Act specifies that the Inquiry address competitive procurement method for T&D utilities as defined in [35-A M.R.S. § 102\(20-B\)](#) and therefore includes both investor-owned and consumer-owned T&D utilities.

- c. Instances in which a competitive procurement process may not be an option or is otherwise not practicable, and the reasons why it is not an option.
2. A detailed discussion of the utility's practices and policies regarding competitive procurement of goods and services including the process for seeking competitive bids, such as preparation of the Request for Proposal (RFP), publication of the RFP, evaluation of bids and award of contract.
3. All internal documents regarding the utility's practices and policies regarding the procurement of goods or service through a competitive procurement process, including any such documents for practices and policies of affiliates that are applicable to the utility.
4. A detailed discussion of the costs associated with engaging in a procurement process for the purchase of goods and services, particularly as compared to the cost of purchasing goods and services using an alternative method.
5. Information showing, of the utility's total "cost of service" (including amounts that are capitalized, expensed, or accounted for otherwise) for each of the last five years, the types and amounts associated with "goods and services" as the utility interprets that term and has reflected that use in the information provided in response to the prior questions. Of the amounts associated with "goods and services," please identify categories and amounts that were obtained through competitive procurement and those that were obtained through other means. Please include a brief explanation or rationale for the procurement or other means used.

The Notice provided all interested persons an opportunity to submit responses to the utilities' filings.

Maine's two investor-owned T&D utilities, Central Maine Power Company (CMP) and Versant Power (Versant), submitted comments. The following consumer-owned utilities filed comments and information on their procurement practices: Eastern Maine Electric Cooperative, Houlton Water Company, Kennebunk Light & Power District, Madison Electric Works, Van Buren Light & Power District and Fox Islands Electric Cooperative (COU T&D utilities).

The Commission received responsive comments from the Office of the Public Advocate (OPA). CMP and Versant submitted replies to the OPA's responsive comments.

III. COMMENT ON PROCUREMENT PROCESSES

A. Central Maine Power Company

In its comments, CMP stated that it conducts a robust purchasing process, which analyzes the technical qualifications and financial costs of each bid and is specifically designed to award the most economical and technically qualified bid. When conducting procurement activities CMP

follows its parent company, Avangrid, Inc's (Avangrid), Purchasing Risk Policy,³ which establishes a framework for monitoring and managing the risk resulting from the purchasing activities undertaken for the procurement or contracting of equipment, materials, works and services.

CMP stated that it also follows Avangrid's Purchasing Procedure,⁴ which provides step-by-step guidance on how to comply with the Risk Policy. The Purchasing Procedure governs business area and team responsibilities, amount limits by purchase types, authority, ethics, and other relevant areas. Suppliers for CMP and Avangrid are required to comply with the standards established in the Supplier's Code of Ethics.⁵

CMP emphasized that it benefits from the purchasing power of its parent companies. CMP leverages Avangrid's purchasing power and larger competitive tenders are launched for all of Avangrid by aggregating and standardizing demands across regulated utilities and business areas. For certain goods and services, tenders are launched globally to benefit from the even greater leverage and expertise of the entire group of Avangrid's parent company, which is Iberdrola. In doing so, CMP gets faster access to essential equipment and has preferential access to a global supplier base at better terms and conditions than similar utilities on a stand-alone basis.

The majority of purchases for CMP are through competitive purchasing processes. Avangrid internal metrics show that in 2021 approximately 90.2% of the total value of all contracts were awarded through competitive purchasing processes, and over the last 5 years (2017-2021) approximately 86.5% of the contracts were awarded through competitive purchasing processes.

Regarding its specific practices, CMP stated that its Procurement Procedure dictates that all purchases of Equipment Materials Works and Services (EMWS) that are greater than \$10,000 must follow the procurement process. The most common EMWS that CMP purchases include construction and engineering services; vegetation management services; personal protective equipment; electrical equipment, installation, and support services; overhead lines, poles, and towers; and software and hardware. Goods and services that are not defined as EMWS may be exempt from the procurement process. For example, the Purchasing Procedure does not apply to fuel, energy, real estate, contracts with municipalities or government agencies, legal services, financial services, payment authorization orders (PAO), other non-purchase order invoices, and corporate credit card transactions.

Regarding instances in which it foregoes a procurement process, CMP indicated that there are clearly defined exemptions from the procurement process. These exemptions are limited to circumstances that have been previously approved by the responsible departments and are limited to payment obligations in which there is no possibility for negotiation, or these negotiations are conducted by specialized departments within the Company (*e.g.*, Insurance, Human Resources, Real Estate) and third parties (*e.g.*, brokers, real estate sales and acquisitions). For example, PAOs and non-purchase order invoices (*e.g.*, tax payments, fleet fuel, bank services) are exempted from the process in that only a payment is required and thus a

³ The Risk Policy is included as Attachment 1 to CMP's comments.

⁴ The Purchasing Procedure is included as Attachment 2 to CMP's comments.

⁵ The Supplier's Code of Ethics is included as Attachment 10 to CMP's comments.

procurement process would not yield any benefits in terms of savings, lead time, or the quality of goods and services purchased.

Further, CMP commented that Direct Purchases for single one-time needs less than \$10,000 are not subject to a competitive procurement process because it would not be cost-effective in such instances. In addition, a competitive procurement process is not an option in the instance of single source purchases, where only one supplier can be invited to present an offer due to the unique nature or circumstances of the purchase. In order for a single source to be approved, it must be first demonstrated why there is only one source available for the purchase. For example, a single source may be used for a replacement part for equipment and fleet, servicing existing software, or a vendor's unique specialty or qualifications.

B. Versant Power

Versant commented that its procurement process is governed by the Company's Procurement Guidelines (the Guidelines).⁶ Versant's decision whether to use a competitive procurement method involving soliciting bids from vendors of goods or services is generally tied to the dollar value of the project or purchase at issue. The Guidelines include tiers of expenditures and specifies that, for purchases between \$50,001 and \$250,000 a request for information, request for proposal, or request for quote may be initiated to procure the goods or services. RFPs are the most commonly used form of competitive procurement. Versant states that the decision whether to utilize an RFP is made through consultation with the business unit. Certain specific spend categories or items are listed as exceptions to the Guidelines.⁷

For purchases worth more than \$250,000, a formal competitive procurement method is required, with some exceptions. Versant indicated that there are circumstances in which the performance of a vendor or specific situational concerns require direct negotiation and contracting with a specific vendor or vendors, even for high-value projects. This generally occurs only when there is an urgent need, and a minimal number of vendors are willing to provide the goods or services needed. Versant noted that all purchases worth more than \$500,000 must have executive approval.

Regarding determinations to forego a procurement process, Versant stated that satisfaction with a current vendor's performance, knowledge of the market, and familiarity with available vendors are the primary factors that would influence a decision to forego using a competitive bidding process. Versant also stated that there are circumstances in which time pressure creates an urgent need for the service or good and under such circumstances, a procurement process may not be an option or is otherwise not practicable. Versant's formal internal Sole Source Procurement Recommendation document⁸ provides guidance for sole source procurement without engaging in competitive bidding.

⁶ The Guidelines are attached as Exhibit A to its comments.

⁷ The exceptions to the Guidelines are attached as Exhibit B to its comments.

⁸ The document is attached as Exhibit C to its comments.

C. Consumer-Owned Utilities

The consumer-owned T&D utilities (COUs) generally commented that they are relatively small in size, and do not have formal processes surrounding when and how they engage in competitive bid processes. Accordingly, these utilities do not often utilize competitive bid processes.

The utilities explained that utilization of such formal process is not practical given their size and the amount of materials, supplies, and services procured monthly and annually. Such a formal process would divert resources and the time-limited staff and would likely require additional staffing and corresponding costs. The COUs cited instances when it would not be reasonable to have competitive procurement process, such as use of a local contractor for vegetation management program in which there are long-established relationships. The COUs also noted that, through trade organizations, they are often able to receive the benefit of negotiated price discounts on some products.

The COUs do engage in competitive solicitations for significant projects. Such projects could include the replacement of cable, poles, plant, transformer replacements, purchase of pickup trucks and new metering systems, as well as other projects that involve substantial costs.

D. Office of the Public Advocate Recommendation

In its comments, the OPA recommended that to avoid an undue administrative burden, the Commission should set a reasonable size limit on the projected price for goods and services for a competitive solicitation requirement to apply.⁹ To the extent that a utility fails to follow this Commission policy, the OPA states the burden of proving prudence should shift to the utility.

The OPA recognized that certain goods or services may not lend themselves to procurement through competitive bidding. For example, if the requirements are unique to the purchasing utility or there are limited number of qualified suppliers, it may not be cost effective to engage in competitive bidding.

In addition, the OPA noted that it may be cost effective for a utility to retain qualified professionals, such as accountants or lawyers, for many years so their increasing knowledge of the utility makes them more efficient and cost effective. In such situations, the Commission should consider a policy of requiring that specialized work be put out bid at least every few years.

E. Utility Response to OPA Recommendation

In response, CMP and Versant commented that the Commission should not accept the OPA's proposed standards because they lack reasonable justification, and improperly apply the prudence standard. Further, the OPA's proposed standards are premature as the Commission has not yet evaluated the procurement processes the utilities actually use, nor determined that a rulemaking is necessary.

⁹ The OPA would exempt COUs from this specific requirement.

Moreover, CMP and Versant stated that the OPA's claimed justifications lack merit, lack record support, and neither explain why the OPA's proposed standards are necessary nor why the Commission must consider them at this stage in the proceeding. The utilities state that it is difficult to imagine how the proposed rule would work in the context of procurement issues, particularly when not every purchase by the utility can utilize competitive procurement processes; the purchasing goods and services for the lowest price is not always in the best interests of the Company or its customers; and market conditions, the availability of certain goods, and labor force services are always in flux.

Finally, the utilities state that the Commission is not required to adopt any such requirement, there is no evidence to suggest that such a requirement is needed, and it is not possible to craft a procurement rule that could address the many and varied purchasing scenarios facing utilities.

IV. DISCUSSION

Having reviewed the information provided through the Inquiry, the Commission does not believe the utility's competitive procurement policies and strategies outlined in their comments raise any generic or overall systematic areas of concern. As outlined in the utilities' filings, the issues regarding each significant procurement of goods or services, and whether a competitive procurement is warranted, are very much fact specific. For example, a competitive procurement may not be warranted or cost-effective when the goods or services are unique to the purchasing utility, there are limited number of qualified suppliers, when unique skillsets are required, and when the existing relationship with a vendor has added value. Thus, any determination regarding a procurement process for goods and services depends on the individual facts and circumstances.

Moreover, the filings by CMP and Versant in the Inquiry demonstrate that the utilities have robust procurement policies in place. A significant majority of the utilities' procurements are conducted using competitive procurement methods. It is important to note that even when an acquisition is not subject to competitive bidding, both the policies and practices of the utilities seek to obtain the highest value at the best price through other means. The utility policies generally contain reasonable exceptions from the standard procurement process for lower value purchases and single source purchases.

Because of the wide variety of significant types of procurements and the need to assess facts specific to each major procurement, the Commission concludes that a rulemaking to adopt specific requirements and standards would not be appropriate or useful. There is no uniform rule that could be adopted to accurately capture all transactions. Thus, the Commission does not anticipate conducting such a rulemaking.

Similarly, the Commission does not accept the OPA's recommendation that it adopts a requirement that a competitive solicitation occur for the procurement of goods or services above a pre-specified dollar size, and that the burden of proof to demonstrate prudence shifts to the utility when the pre-set requirement for a competitive procurement does not occur. As discussed above, the varied circumstances in which utility procurements occur make such requirements impracticable.

The Commission emphasizes that it carefully scrutinizes each utilities' actual procurement practices and results in each utility's rate case proceeding. To the extent the utility has acted unreasonably or imprudently in carrying out procurements for goods and services, any excess resulting costs would not be recovered from ratepayers. A bright line rule around amounts that required competitive solicitation could potentially make it more difficult to find a decision imprudent. One could imagine, for example, that some kinds of expenses below the threshold would benefit from competitive solicitation. Alternatively, an expense that is above the threshold but urgent for service quality might not be prudent to spend many months procuring through a competitive process. A more nuanced approach, evaluated on a case-by-case basis, better protects ratepayers over the long-term.

Finally, the Commission highlights that it has the statutory authority under [Title 35-A, Section 113](#) to require, at any time, the performance of a management audit of the operations of a public utility. Specifically, section 113 authorizes an audit to determine whether the utility's operations are "conducted in an effective, prudent and efficient manner..." and the degree to which the utility "minimizes or avoids inefficiencies which otherwise would increase costs to customers."¹⁰ To the extent the audit results in an imprudence finding, the utility ratepayers will not pay for the costs of the audit.

¹⁰ 35-A M.R.S. §113(1)(B) and (C).