

Competitive Electricity Procurement

To assist Texas political subdivisions in identifying variables and qualifications needed to make an "apples to apples" comparison of bid responses, the Texas General Land Office (GLO) recommends that you consider following factors. There are numerous factors to consider when selecting an electricity provider and product. In addition to the lowest price per kilowatt hour, the best value will be determined by factors such as pass-through charges, permitted escalations of pass-through costs, restrictive contract provisions, the level of customer service, and the financial stability of the electric provider.

Price Structure

Many public entities choose a fixed price per kilowatt hour (kWh) structure because it provides cost and budget predictability over the term of the contract. The competitive market will fluctuate, perhaps widely, and a fixed-price contract will protect the purchaser from upward price movements but will prevent benefiting from downward energy price movements that occur during the term of the contract.

Some public customers, usually larger entities, choose an energy price that is indexed to the price of natural gas (from which approximately 70% of Texas power is generated) or to the balancing price of the Texas electricity market or some combination of the two. An indexed price may increase significantly during the contract unless the contract includes additional provisions to limit risk. Such provisions usually add cost (included in an "adder" provision to the price) and act as insurance against rising fuel costs. This type of price structure generally requires more active management from the customer.

Price Components

A low initial price may not always represent the best overall value.

Competitive power prices consist of many components. Proposals and contracts may contain unnoticed, or difficult to quantify, variable charges that may cause the invoice price to significantly exceed the kWh price quoted in the contract. It is important to understand which charges are included in the contract price and which charges will be "passed-through" from a third party by the Retail Electric Provider (REP) because the passed-through charges may increase during the term of the contract. Without a clear understanding of all price components, it is impossible to make an informed, "apples-to-apples" comparison of bid responses.

Overall electricity cost is composed of three basic categories:

1. Market-Driven Costs, including
 - "Energy Charges" for the electric commodity.
 - Ancillary Services Charges from ERCOT, the Independent System Operator (ISO) In Texas.

- Congestion Management Charges. These are the non-negotiable costs related to the geographic availability of sufficient generation to meet the area's electric load.
- QSE Fees -- the non-negotiable cost of scheduling electricity on the power grid.
- Line Losses -- the non-negotiable cost of the volume of electricity expected to be lost during transmission of a customer's load.

It is reasonable to expect a REP to include, or "bundle," all of these costs in their basic energy charge and this can be made a requirement in an RFP. If these charges are unbundled and "passed through", the contract will include an unquantifiable and unverifiable cost.

2. TDSP Charges

There are charges from your regulated utility, or Transmission and Distribution Service Provider (TDSP) related directly to delivering your electricity via the grid of wires and poles. Additionally, the TDSP is allowed to recover costs associated with the transition from a regulated to a competitive electricity market. TDSPs must receive approval for these charges from the Public Utility Commission of Texas (PUC). The charges fall into two categories:

1. Regulated Stranded Costs
2. Regulated Transmission & Delivery Charges

If the customer chooses to have the TDSP charges and/or credits passed through, make sure the contract provides for passed-through decreases as well as increases. Many REPs also offer the option to bundle these charges into your energy charge.

3. Taxes and Fees

- Sales Tax
- Gross Receipts Tax Reimbursement Charge
- PUC Assessment Reimbursement Charge

REPs typically pass these charges through when applicable.

Public entities should draft Requests for Proposals (RFP's) that require full disclosure of all price components (if the RFP requires an index based price structure, drafter should specify the index so that all other costs will be separately quoted) and require each bid response to specify what charges are included in the kWh quote and which are not and how each provider treats positive and negative changes in all pass-through items. Doing so will allow informed decision-making and mitigate unexpected charges.

Other Contract Issues

Usage Restrictions ("Bandwidth," "Swing," "Tolerance," "Imbalance," "Settlement")

Common practice among REPs for customers who might have variable consumption patterns is to restrict the amount of electricity the customer may use at the contract price to within a certain percentage of the contract Benchmark Quantity (BMQ). This is often referred to as “bandwidth” or “imbalance” and usage that is outside of this percentage, either above or below the BMQ, is “settled” at the then current market price, since the REP has to either procure additional energy or dispose of unused energy that has been purchased for that customer. This can expose the purchaser to unforeseen charges.

Settlement is usually based either on usage for each monthly period of the contract or each yearly period, with annual settlement being the more forgiving, and therefore less costly, settlement provision.

Customers with historically stable and predictable consumption patterns, such as school districts, should require a contract offer that either does not have a restriction on usage or that allows for a high percentage of variation with longer settlement periods.

Addition and Deletion of Meters

An RFP should require offers that allow the addition or removal of meters (accounts) and associated adjustment of contract quantities without penalties, as long as the additions or deletions of meters are within a specified or identified range of base BMQ's and in the normal course of business. This flexibility ensures that the electricity you purchase from new standard meters will be priced at the contract rate and standard deletions will not impact the contract electricity price.

The purchaser should carefully review any proposed contract to determine how adds/deletes will be handled and at what price usage from new meters will be billed. Fast growth school districts should carefully evaluate these contract provisions. The lowest initial electricity price may not necessarily result in the lowest price over the contract term when BMQ's exceed the specified range in the contract.

Material Change

Most providers do not allow a permanent, large change in the volume of electricity purchased without amending the contract quantities and contract price. The “Material Change” contract provision should address potential significant changes in usage and any cost associated with that change. Events of Material Change are rare and normally result from a major change in your facilities. If your contract allows your REP to adjust the contract price in an event of Material Change, the new price would typically be affected by then current market prices. Purchaser should specify a Material Change provisions to ensure the provisions accommodate your facilities' electricity forecasts.

Cancellation Provisions

Various contract provisions describe the circumstances under which the contract may be terminated or be declared in default and subject to financial penalties. Such provisions should apply only to failure to comply with material performance provisions of the contract and should be bilateral. Neither the customer or the REP should benefit from early termination.

Meter, Aggregation, Broker and Other Fees

An RFP should require that all meter, aggregation, broker and other fees be separately and completely set out in the contract. The contract should also require that meter fees be accurately described as per-meter or monthly base charges.

Force Majeure

An RFP should limit force majeure provisions to protect the customer and REP from liability for events and circumstances beyond their control and not so broad that they could allow use of the provision for avoidable failure to perform.

Conversion to Nodal Market

Texas is projected to convert from a Zonal Market to a Nodal Market December 31, 2010. This change will effect congestion management charges allocated to end-users. It is impossible to determine future congestion charges in the Nodal Market because they will be influenced by then-current market conditions. RFP's should specify whether responders' energy price includes the cost of congestion charges after nodal implementation or passes them through to you.

Customer Service, Billing & Payment Terms

Resources expended dealing with poor customer service (inaccurate or incomplete bills, managing add/drops, etc.) can erode or obliterate any savings expected by selecting the lowest energy price. RFP's should solicit sufficient information to evaluate responses, such as:

- Will full-time customer service be provided for the full term of the contract?
- Will it be provided by in-house staff or contracted out to a third party?
- What are the hours of operation?
- Is emergency customer service available?
- Will the customer have an account representative or have to rely on a mass call center?
- Is the call center located in Texas or another state or country?
- Will they assist in requests to your TDSP, allow/require you to contact the TDSP directly or both?
- Is billing accomplished with an in-house staff or a vendor?
- Is there an individual invoice for each meter?

- Do invoices provide details of all charges for each meter?
- Are options available for bill summaries or consolidated billing?
- Are 30-day payment terms offered for public entities?
- Are there any incentives for early payment?
- Are Electronic Data Interchange (EDI) billing and electronic payment options available?

On-Line Account Access

- Does the responder provide free on-line access to your accounts?
- What range of information is available? (invoices, account history, payment information, energy usage information)

Provider Capabilities and Experience

The RFP should specify that all responders and subcontractors have the legal authority to provide competitive electricity supply in Texas. Additionally, it is important for a public entity to select an established provider that has a track record evidencing the capabilities and experience required to reliably provide electricity supply. Information you may wish to requests includes:

- Company Description
 - Corporate structure
 - Affiliations with regulated utilities
 - Location of offices
- Experience
 - Years of experience providing competitive retail electricity supply
 - Number of customer currently served; annual sales volume
 - Customer references
- Overall Knowledge
 - Provider's expertise in the Texas electricity market, wholesale supply, related natural gas market, regulatory issues, ERCOT operations, etc.
- Financial Capabilities
 - Is the provider financially strong and stable?
 - Is the provider, its parent company or any affiliates now involved in or has it ever been involved in any bankruptcy proceedings or financial reorganization?
 - Does the provider hedge all fixed price transactions either with a financial or physical hedge?
- Legal Proceedings
 - Is the provider involved in any significant legal (including regulatory) proceedings regarding its competitive retail electricity supply business?
- Source of Supply
 - What are the sources of generation for your retail electricity supply?

- Are they diverse or is your supply dedicated from only a limited number of physical locations?
- Product Offerings
 - Does the supplier offer a full range of product offerings to meet your needs, not only in terms of price structure but also regarding flexible options within your preferred price structure.

Example RFP Format

Each power purchaser has unique contracting and procurement requirements. If you choose to select your electricity supplier through a competitive Request for Proposals (RFP), you should describe these requirements in adequate detail to inform prospective suppliers about what you will require.

In addition to your unique requirements a typical RFP might include the following sections.

I. Statement of Purpose

(Provide a brief summary of your objectives.)

II. Description of Purchaser

(Describe your organization and facilities.)

III. Scope of Purchase

(Describe number of facilities, historic annual electricity consumption, desired price structure(s), length of contract, etc.)

IV. RFP Instructions

- Due Date
- Pre-proposal conference
- Instructions and deadline for submitting questions
- Submittal and contact information (name, phone, delivery address, whether email submittal or hard copies, number of copies, etc.)

V. Terms & Conditions

(Describe any special terms and conditions you require.)

VI. Required Content

1. Proposal Summary
2. Pricing and Product Structure
 - List of All Price Components
 - Flexibility in Product and Pricing Structure
3. Qualifications & Experience
 - Company Description
 - Experience
 - Overall Knowledge
 - Financial Capabilities

- Legal Proceedings
 - Source of Supply
 - Product Offerings
4. Capabilities and Services
- Billing
 - Customer Care
 - On-Line Account Access
5. Sample Contract

VII. Evaluation Process and Criteria

(Describe the process and criteria you will use for evaluating proposals and whether there will be a specific scoring system)

VIII. Required Forms

(Felony Conviction Notice, Conflict of Interest Questionnaire, etc.)