

May 15, 2008

**COMMENTS ON THE 2008 PROCUREMENT PROCESS  
PURSUANT TO SECTION 16-111.5(O) OF THE PUBLIC  
UTILITIES ACT**

**NERA**

Economic Consulting

## I. Introduction

NERA Economic Consulting (“NERA”) appreciates the opportunity to submit these comments in response to the request by the Illinois Commerce Commission (the “Commission”) for comments regarding the recent procurement events held by ComEd and Ameren.

NERA served as the Procurement Administrator for the ComEd Standard Products and REC RFPs and as such is in a position only to comment with respect to the ComEd RFPs. NERA’s comments will be in general limited as NERA believes that the ComEd procurement events were conducted as specified in the Act and produced results that were approved by the Commission. Our comments outline several suggestions that could result in improvements to the implementation of future procurement events and point out features of the process that, while appropriate for the first procurement, may be refined for future procurements.

## II. Potential Improvements

We offer four suggestions as to potential improvements. These are as follows:

- *Approval guidelines* – NERA suggests that the Commission commit itself to only accepting or rejecting each bid recommended by the Procurement Administrator and making clear that it will not accept a bid that is not recommended by the Procurement Administrator. This would enable the Procurement Administrator to inform bidders definitively with respect to their maximum supply exposure and reduce bidder risk resulting from uncertain open obligations.
- *Clarification of post-auction activity in light of under subscription* – The Act calls for a post-procurement meeting of the Procurement Administrator, the Procurement Monitor, and Staff in the event of a failure of the procurement process to meet the load requirements. The Act also specifies that such a meeting would occur if this failure is due to insufficient supplier participation. NERA proposes that a post-procurement meeting always occur if the procurement process fails to meet the load requirements. NERA would submit that if the load requirement is not met, greater supplier participation would always ameliorate the situation; insufficient supplier participation is almost by

definition a reason for the procurement process to fall short for this reason. Further, it would be impractical to determine whether there were specific reasons leading to the procurement process not meeting the load requirements without holding such a meeting. Always holding a post-procurement meeting when the load requirements are not met is not barred by the Act. It is not specifically required but may be helpful in the future.

- *Information release* – NERA suggests for the Commission to consider releasing the volumes of each product procured along with the average prices for each product and the names of winning bidders. The results of the procurement cannot be assessed by the public without knowing whether the load requirements were met and what proportion of the load requirements were met at the named prices. The Act specifically bars the release of bidding information and supplier information. While the aggregate quantities purchased do not appear to fall within these categories, parties other than the Commission are not well positioned to make such a judgment. NERA further suggests that the Commission include this information in the single information release made upon approval of the results. The Commission could then make clear that this information release would constitute all the information to be released by it or any other entity with respect to the Procurement.
- *Benchmark lessons learned* – In general we believe that the benchmarking process served its intended purpose. We suggest that in future years the Procurement Administrator, Procurement Monitor, and Staff review the prior year benchmark experience and see if lessons can be learned from that experience.

### **III. First RFP Features**

Features of the first RFP should be re-examined to see if continued use is beneficial. These features are as follows:

- *Expanding the comment process on the contract* – NERA used a standard industry contract and allowed for receipt and evaluation of requested changes in roughly a two-week period. No additional time was available given the necessity to hold the

procurement event with sufficient time for a possible follow-up procurement event. NERA received many comments and concentrated its efforts on changes requested by multiple parties that seemed highly unlikely to negatively affect another party and that did not make the contract less favorable to customers, or changes that were a clear improvement in terms of increasing clarity. Both types of changes afforded the most potential benefit in terms of ensuring participation in the RFP. It is possible that with an expanded comment process, including two rounds of comments over a four to six week period, additional comments could have been evaluated and accepted. For example, comments from a single supplier could be accepted if it could be determined that it did not harm other suppliers or consumers. Participation with this year's abbreviated process was robust but could perhaps be improved with an expanded comment process on the contract.

- *Bilateral credit* – Bilateral credit is unusual in the context of a utility procurement as a regulated utility typically has a low default probability and operating under regulatory oversight will not opportunistically abandon a contractual obligation. It may be costly for a utility to provide such credit as it can use limited credit lines and impose carrying costs. As such the savings in bid prices may be lower than the costs. NERA recommended bilateral credit for the ComEd 2008 RFP given that ComEd did not have an investment grade rating and given the changes in the environment subsequent to the transition from frozen rates to market rates in Illinois. However, as credit ratings improve and there is demonstrated stability with respect to the transition, it would be reasonable to re-examine whether bilateral credit is justified. The fact that such an arrangement was deemed best for 2008 does not mean that it will be best in future procurements.
- *Bid quantities* – In the 2008 procurement plan, exact quantities for each product were established. While bidders had the ability to submit annual and other package combinations of on-peak or off-peak, the Procurement Administrator was constrained to exactly target 100% of each monthly quantity (110% in July and August on peak). While appropriate for the first year when the feasibility of package bidding was being determined, providing flexibility to deviate in small amounts from the exact target by product may lead to the flexibility to accept combinations that were particularly well

priced even if this led to more than 100% of the expected demand being purchased in one particular month. While this was reasonable given the time constraints of the first procurement in future procurements it may be possible to provide more, albeit limited, flexibility to the Procurement Administrator in consultation with Staff and the Procurement Monitor to develop in advance of receiving bids and to employ an evaluation methodology that permitted small deviations from specified quantities.

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