

ORDER

1. THIS ORDER is issued by the Regulatory Authority in accordance with sections 13 and 63 of the Regulatory Authority Act 2011 and section 23 of the Transmission, Distribution and Retail Licence to issue the Bulk Generation Procurement Rules.
2. Schedule 1 to this Order sets forth the Bulk Generation Procurement Rules and shall have effect.
3. This Order shall become effective on the date of its publication.
4. So ordered this 23rd day of August 2023.

Schedule 1: Bulk Generation Procurement Rules

Matter: 20230823

Date: 22 August 2023

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SECTION I. DEFINITIONS

1. In these Rules, unless the context otherwise requires—

“Assessment Report” refers to the report prepared by the Evaluation Panel upon completing the assessment of Submissions;

“Authority” or “RA” means the Regulatory Authority established under Section 11 of the RAA;

“BELCO” means Bermuda Electric Light Company Limited

“Bidder” means an entity that responds to Solicitation Documents;

“Board” means the Board of Commissioners of the Authority established under Section 19 of the RAA;

“Bulk Generation” or “BG” has the meaning given for “bulk generation” in the EA;

“Bulk Generation business units” refers to the group of Bulk Generation business units, including the Bulk Generation non-competitive business unit and Bulk Generation competitive business units as relevant;

“Bulk Generation competitive business units” refers to the bulk generation business units of BELCO related to activities resulting from a competitive tendering process, where there is a separate business unit for each project competitively won;

“Bulk Generation Licence” has the meaning given in the EA;

“Bulk Generation Licensee” means the holder of a Bulk Generation Licence;

“Bulk Generation non-competitive business unit” refers to the bulk generation business unit of BELCO related to activities not resulting from a competitive tendering process;

“Community Energy Project” means a power generation project that is wholly or partly owned or controlled by a community group;

“Competitive Tendering Process” or “Competitive Procurement Process” means a procurement process whereby multiple Bidders compete to be selected as the Preferred Bidder based on evaluation criteria established in the Solicitation Documents;

“Consent” means any agreement, licence, permission or permit required by a Government body or private landowner to develop a Site and connect and supply power to the Grid;

“Distributed Generation” has the meaning given for “distributed generation” in the EA;

“EA” means the Electricity Act 2016;

“End-User” or “end-user” has the meaning given for “end-user” in the EA;

“Expression of Interest” or “EOI” means documents submitted by a Bidder in response to an Invitation to Express Interest;

“EOI Stage” means the Procurement Stage where an Invitation to Express Interest is issued and Bidders respond by submitting Expressions of Interest;

“Evaluation Panel” refers to the panel which will be responsible for administering the procurement of each Project or Projects Lot in accordance with the Procurement Rules, and described in paragraph 18 of the Procurement Rules;

“Financial Close” means that the Project financing documents have been signed and that the conditions precedent for the availability of financing have been fulfilled (unless specifically excluded in writing by the RA at its discretion);

“General Determination” has the meaning given for “general determination” in the RAA;

“Grid” means the national grid of Bermuda, operated by the TD&R Licensee;

“Grid Code” has the meaning given in the EA;

“Government” means the Government of Bermuda;

“Implementation Agreement” means, as appropriate, the memorandum of understanding between the Preferred Bidder and the RA (for a Competitive Tendering Process) or a Proponent and the RA (for Unsolicited Proposals) indicating the RA’s selection of the Preferred Bidder or approval of the Proponent and the intention of the Preferred Bidder or approved Proponent to develop the Project (or Projects Lot) in accordance with, as appropriate, the Solicitation Documents or Unsolicited Proposal;

“Information Request” means a formal request for further information submitted to a Bidder or a Proponent at any stage of the procurement process;

“Integrated Resource Plan” or “IRP” has the meaning given for the former term in the EA;

“Interconnection agreement” refers to an agreement with the TD&R Licensee with respect to network access and interconnection;

“Invitation to Express Interest” or “ITEI” means documents issued to prospective Bidders containing details of the requirements for Bidders to submit an Expression of Interest;

“Invitation to Qualify” or “ITQ” means documents issued to prospective Bidders containing details of the requirements for Bidders to submit a Qualification Response;

“Invitation to Tender” or “ITT” means documents issued to prospective Bidders containing details of the requirements for Bidders to submit a Tender;

“Minister” has the meaning given in the EA;

“Ministerial direction” has the meaning given in the RAA;

“Notification of Interest” means, in the context of Unsolicited Proposals, documents issued by the RA to confirm to a Proponent that its Unsolicited Proposal is of interest, i.e., that a detailed evaluation of the Unsolicited Proposal should be initiated.

“Offtake Price” means the price of electricity to be stipulated in the Power Purchase Agreement or transfer pricing arrangement;

“Open Three-stage Competitive Tendering Process” means the Competitive Tendering Process described in paragraphs 37 through 56 of the Procurement Rules;

“Open Two-stage Competitive Tendering Process” means the Competitive Tendering Process described in paragraphs 57 through 59 of the Procurement Rules;

“Order” has the meaning given for “order” in the RAA;

“Power Purchase Agreement” or “PPA” has the meaning given for the former term in the EA;

“Preferred Bidder” means the Bidder that is so designated in accordance with paragraph 55 of the Procurement Rules;

“Procurement Rules” means these Bulk Generation Procurement Rules issued by the RA;

“Procurement process” refers to the series of steps which will be followed to procure Projects, which can include Competitive Tendering Processes or Unsolicited Proposals;

“Procurement Stage” means any part of the Procurement Process that starts with the issuing of a Solicitation Document and ends after the Bidders’ Submissions have been evaluated, or any part of the process of Unsolicited Proposals;

“Project” means an individual Bulk Generation project;

“Projects Lot” means a group of individual Projects being procured together;

“Proponent” means a person or entity that submits an Unsolicited Proposal;

“Qualification Response” means documents submitted by a Bidder in response to an Invitation to Qualify;

“Qualification Stage” means the Procurement Stage where an Invitation to Qualify is issued and Bidders respond by submitting Qualification Responses;

“RAA” means the Regulatory Authority Act 2011;

“Reserve Bidder” means the Bidder designated as such in accordance with paragraph 55 of the Procurement Rules;

“Restricted Two-stage Competitive Tendering Process” means the Competitive Tendering Process described in paragraphs 60 through 66 of the Procurement Rules;

“Retail Tariff Methodology General Determination” refers to the GD that details the methodology for setting the retail tariff charged by the TD&R licensee to the electricity consumers in Bermuda;

“Site” means the parcel(s) of land on which the Project is to be constructed, which, in the case of an application for renewal of Electricity Licences, may also include the parcel(s) of land on which the Project is constructed;

“Solicitation Documents” means the documents issued to potential Bidders in an Invitation to Express Interest, Invitation to Qualify, or Invitation to Tender;

“Standard Contract” has the meaning given in the EA;

“Submissions” means the documents submitted by Bidders in response to an Invitation to Express Interest, an Invitation to Qualify or an Invitation to Tender, or as part of an Unsolicited Proposal;

“TD&R Licence” has the meaning given in the EA;

“TD&R Licensee” means the holder of a TD&R Licence;

“Technical Working Group” means the panel appointed by the Evaluation Panel to provide technical advice, as defined in paragraph 21;

“Tender” means documents submitted by a Bidder in response to an Invitation to Tender;

“Tender Stage” means the Procurement Stage where an Invitation to Tender is issued, and Bidders respond by submitting Tenders;

“Third Party” or “third party” has the meaning given to the term “third party” in the EA;

“Transfer pricing arrangement(s)” or “Transfer price” refers to an arrangement pursuant to which the TD&R business unit of a vertically integrated utility procures power from the generation business unit(s) of the vertically integrated utility. The arrangement with Bulk Generation competitive business units is subject to price-cap

regulation, where the allowed price cap is underpinned by the awarded auction price, as stipulated in the Implementation Agreement. The arrangement with the Bulk Generation non-competitive business unit is subject to revenue-cap regulation as defined in the Retail Tariff Methodology General Determination;

“Unsolicited Proposal” means a proposal made to develop a Project submitted to the RA at the initiative of a Proponent or in response to an RA advertisement (issued at the RA’s discretion in keeping with the spirit and intentions of the Procurement Rules), rather than in response to Solicitation Documents; and

“Utility” has the meaning given in the EA.

SECTION II. INTRODUCTION

2. The Procurement Rules set out the process to be followed for the procurement of Projects in Bermuda.
3. Procurement will be initiated by the RA in accordance with the procurement plan laid out in the current IRP. However, it may also be initiated by a Proponent through an Unsolicited Proposal.

SECTION III. PURPOSE

4. The procedures set out herein are intended to be efficient, transparent and simple to use.
5. It is intended that the Procurement Rules will lead to the implementation of Projects that best meet the purposes of the EA and the objectives set out in the current IRP in the most cost-effective way for End-Users.
6. It is expected that specific elements of each procurement process, including but not limited to the evaluation criteria and weighting factors, will be determined at the time of initiating the relevant procurement process at the discretion of the RA, depending on the details of the Project.
7. The nature, threshold, and weighting factors of evaluation criteria may be impacted by a range of factors, including but not limited to the size and complexity of the Project, the Project location, the type of power generation technology considered, and relevant policy objectives.
8. All elements of the process will be made clear to all Bidders and publicly available in the Solicitation Documents.

SECTION IV. APPLICATION

9. The Procurement Rules apply to the procurement of Projects to be connected to the Grid.
10. By extension, the Procurement Rules do not apply to the procurement of Distributed Generation projects.
11. The following principles have been established to comply with and supplement the Purposes of the Electricity Act (Section 6 of the EA) – they underpin the Procurement Rules —
 - a) To ensure the adequacy, safety, sustainability and reliability of electricity supply in Bermuda;
 - b) To promote the use of cleaner energy sources and technologies;
 - c) To promote economic efficiency and sustainability in the generation, transmission and distribution subsectors;
 - d) To maximise economy, efficiency and effectiveness in procurement;
 - e) To foster and encourage Bidder participation to increase competition;
 - f) To promote competition among Bidders for the supply of electrical services;
 - g) To provide for impartial, equal and equitable treatment of all Bidders; and
 - h) To promote the fairness and integrity of as well as public confidence in the procurement process.

SECTION V. ROLES AND RESPONSIBILITIES OF STAKEHOLDERS

12. The roles and responsibilities of stakeholders in Bermuda's electricity sector are described in the RAA, the National Electricity Policy 2015 and the EA.
13. This section describes the roles and responsibilities of the relevant stakeholders in the Bulk Generation procurement process.
14. The stakeholders relevant to the procurement of Bulk Generation are:
 - a) the Minister;
 - b) the RA;
 - c) the TD&R Licensee;
 - d) the Bidders or Proponents; and
 - e) the owner(s) of the land at location of proposed Project or Projects Lot.
15. End-Users are not directly involved in the procurement of Bulk Generation, but their interests are represented by the RA, as laid out in the RAA and the EA.
16. The Minister's roles and responsibilities are laid out in the RAA, the EA and other relevant legislation. The Minister does not have any direct involvement in the procurement of Bulk Generation unless the Minister issues a Ministerial direction.

17. The owner(s) of the proposed Site(s) shall provide written Consent for such land to be used for the full duration of the Project or Projects Lot. In the case of an Unsolicited Proposal, a draft lease agreement shall be provided for the full duration of the Project or Projects Lot.

In the context of competitive procurement only:

18. The RA will establish an Evaluation Panel at the initiation of each competitive procurement process, which will be responsible for administering the procurement of each Project or Projects Lot in accordance with the Procurement Rules (see Section XIV). The Evaluation Panel will be accountable to the Board to ensure that the Evaluation Panel acts in accordance with the relevant legislation and the Procurement Rules.
19. The TD&R Licensee has the responsibility of preparing the draft PPA and interconnection agreement (or such like agreements in the case of the Bulk Generation Licensee related to the TD&R Licensee, including the transfer pricing arrangement) forming part of Solicitation Documents, in consultation with the Evaluation Panel. Any material changes (before, during, or at the completion of the Competitive Procurement Process) to either the draft PPA, draft interconnection agreement, draft transfer pricing arrangement (in the case of the Bulk Generation Licensee related to the TD&R Licensee), or such like agreements will be subject to the TD&R Licensee's non-objection. Any objection formulated by the TD&R Licensee must be supported by a reasoned explanation making direct reference to TD&R Licence provisions. Agreement or objections must be raised within two weeks of the TD&R Licensee receiving notification of such modifications.
20. The Evaluation Panel will consult with the TD&R Licensee at the beginning of each competitive procurement process for a Project or a Projects Lot to identify and agree all of the conditions for interconnection listed in Section 47(3) of the EA that are relevant to the Project or Projects Lot and when necessary, discuss appropriate mitigations to minimise system balancing costs. These conditions include investigating whether the Grid will require upgrades or modifications to allow interconnection of the Project or Projects Lot. If upgrades or modifications will be required, the TD&R Licensee will describe the nature and estimated costs of these. The Evaluation Panel will decide, in consultation with the TD&R Licensee, whether the upgrade or modification works should be done by the TD&R Licensee or be included in the scope of the Project or Projects Lot.
21. The Evaluation Panel (EP) will appoint a Technical Working Group upon initiation of the Tender Evaluation Stage of the procurement process. The main purpose for setting up a Technical Working Group will be to provide technical advice to the Evaluation Panel, such as validating that technical solutions provided by Bidders are unlikely to impede the safe and reliable operation of the electrical network in Bermuda.

22. The Technical Working Group shall include the TD&R Licensee and may include members of the EP and individuals with technical expertise relevant to the procurement process including consultants.
23. Irrespective of whether an entity related to the TD&R Licensee through ownership or cooperation agreement intends to be a Bidder, the TD&R Licensee will only be represented on the Technical Working Group. Section XVIII sets out how the Evaluation Panel will transfer information on Bidders' Submissions to the Technical Working Group.
24. As described in the EA, the Preferred Bidder may be granted a Bulk Generation Licence when the Bidder has met the conditions pursuant to Section 23 of the EA, including but not limited to having entered a PPA with the TD&R Licensee.
25. The Bidders shall meet the eligibility requirements laid out in the Procurement Rules and Solicitation Documents for each Project or Projects Lot.

In the context of Unsolicited Proposals only:

26. The TD&R Licensee has the responsibility of preparing the draft PPA and interconnection agreement upon receiving the RA's Notification of Interest for the Project considered (see paragraph 72). Any material changes (during, or upon completion of the evaluation of the Unsolicited Proposal) of either the draft PPA or draft interconnection agreement will be subject to the TD&R Licensee's non-objection. Any objection formulated by the TD&R Licensee must be supported by a reasoned explanation making direct reference to TD&R Licence provisions. Agreement or objections must be raised within two weeks of the TD&R Licensee receiving notification of such modifications. More details on the process for Unsolicited Proposals can be found in Section XIII.
27. The Bulk Generation Licensee, through the Bulk Generation non-competitive business unit, related to the TD&R Licensee, and entities related to the TD&R Licensee through ownership or cooperation agreement, are eligible to be a Proponent. The proposals from the Bulk Generation Licensee related to the TD&R Licensee will be considered as part of the retail tariff rate reviews.

SECTION VI. COMPLIANCE AND ELIGIBILITY

28. The RA will ensure that the procurement of a Project or Projects Lot is compliant with the EA, the Bribery Act 2016 and any other legislation that is relevant at the time of such procurement.
29. Submissions from any Bidder or Proponent will be accepted and considered for evaluation, as long as such Submission does not contravene the provisions of the EA, Orders, General Determinations or any other legislation that are relevant at the time.

SECTION VII. INITIATION OF THE PROCUREMENT PROCESS

30. The procurement process for Bulk Generation is initiated by the requirements set out in the most recent IRP.

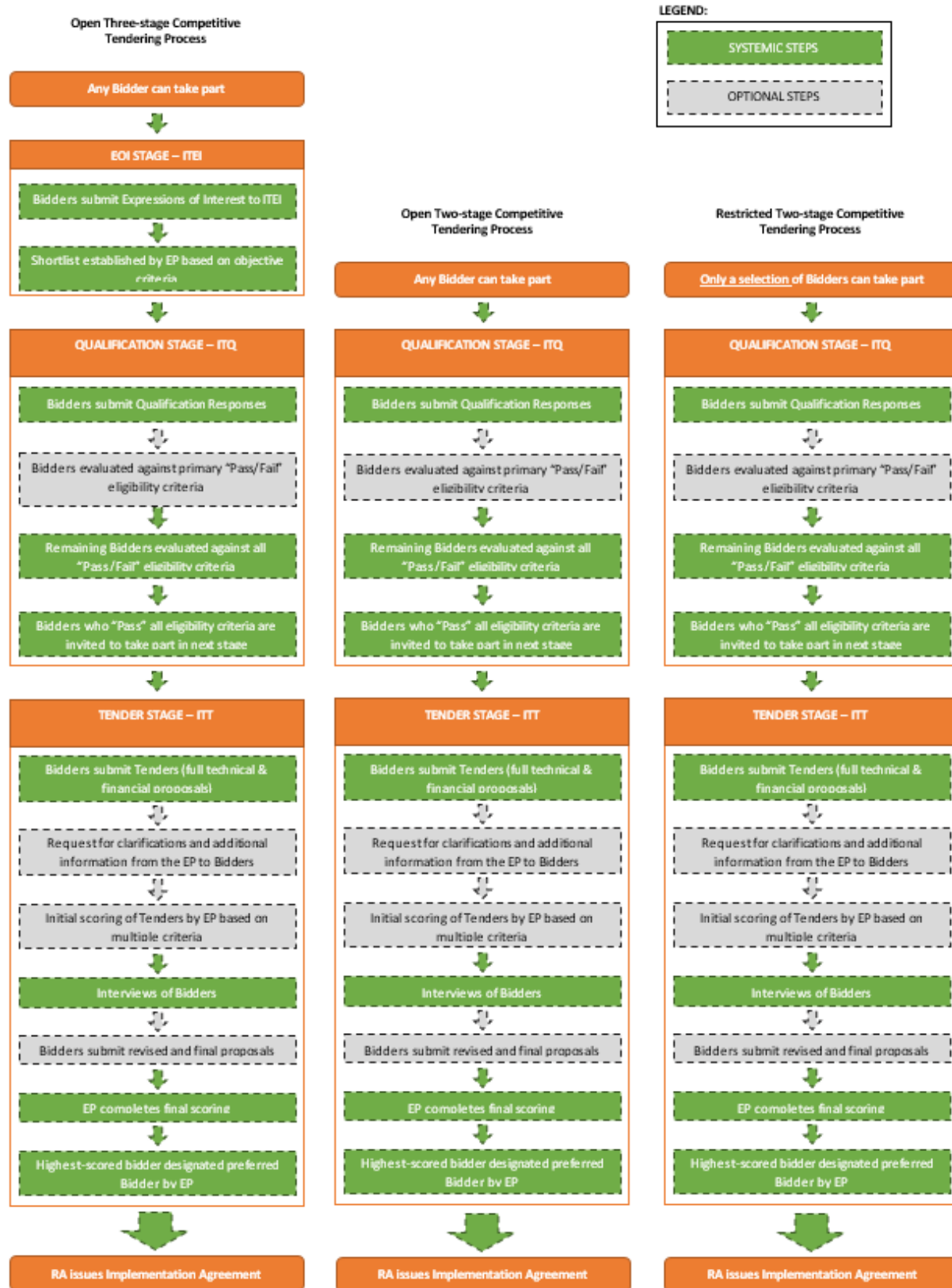
SECTION VIII. OVERVIEW OF PROCUREMENT METHODS

31. Project or Projects Lot procurement may be by any of the following methods, which are described in Section X to Section XIII:
 - a) Open Three-stage Competitive Tendering Process;
 - b) Open Two-stage Competitive Tendering Process;
 - c) Restricted Two-stage Competitive Tendering Process; or
 - d) Unsolicited Proposals.
32. The RA may require payment of application fees for Submissions in relation to Competitive Tendering Processes or Unsolicited Proposals prior to consideration of same.
33. The RA may at its discretion require bid bonds and completion bonds to be provided for Competitive Tendering Processes.

SECTION IX. SELECTION OF PROCUREMENT METHOD

34. The method of procurement for a Project, or Projects Lot, will be selected on a case-by-case basis considering factors such as, but not limited to size, risk, complexity and planned commercial operation date by the RA.
35. Selection of the preferred method of competitive tendering may be dependent on the following, *inter alia*:
 - a) Complex Projects, of relatively small size, and unlikely to generate significant interest from the private sector are more likely to be procured under procurement method (b) listed under paragraph 31;
 - b) Less complex Projects and/or of larger size, and more likely to generate interest from the private sector are more likely to be procured under procurement method (a) listed under paragraph 31; and
 - c) Projects being re-tendered and having previously attracted sufficient interest from the private sector (under the same or similar specifications), are more likely to be procured under procurement method (c) listed under paragraph 31.
36. A summary of the three Competitive Tendering Processes is provided in Figure 1.

Figure 1: Overview of Competitive Procurement Methods



SECTION X. OPEN THREE-STAGE COMPETITIVE TENDERING PROCESS

37. The Open Three-stage Competitive Tendering Process includes the following stages:

- 1 EOI Stage;
- 2 Qualification Stage; and
- 3 Tender Stage.

X.1 EOI Stage

38. In the EOI Stage, the ITEI will request Bidders to express interest in participating in the Qualification Stage of the Procurement Process, provide information and to demonstrate that they satisfy the defined pre-eligibility criteria.
39. Only Bidders that submit an EOI may participate in the Qualification Stage of the procurement.
40. The ITEI documents will include high-level information about the Project, or Projects within Projects Lot, such as size, location, and technology.
41. Pre-eligibility criteria for participation in the Qualification Stage will be defined in the Solicitation Documents and may cover a range of aspects, although it is anticipated that Solicitation Documents would focus on assessing the professional and technical competence and qualifications of potential Bidders.
42. The Evaluation Panel will select Bidders amongst those that meet all pre-eligibility criteria in the ITEI. ITQs will be sent to these selected Bidders.

X.2 Qualification Stage

43. In the Qualification Stage, the ITQs sent to eligible Bidders will include detailed information on the Project, or Projects within Projects Lot, typically including but not necessarily limited to:
 - a) Project location, size, and technology;
 - b) Draft interconnection agreement, draft PPA, draft transfer pricing arrangement, or such like agreements;
 - c) Landowner(s)' written Consent; and
 - d) Environmental and social considerations.
44. All Bidders will be assessed against eligibility criteria listed in the ITQ. All Bidders shall be assessed as either a "Pass" or "Fail". The eligibility criteria will cover a range of aspects that may include, but not be limited to, the following:
 - a) Legal requirements (e.g., whether the Bidder is uniquely identified, whether the application is compliant with the law, requirements on entity's ownership and shareholding structure, agreement "in principle" to the terms of draft PPA or transfer pricing arrangement);

- b) Financial health (e.g., audited financial statements, minimum net worth rating, credit rating);
 - c) Agreements and partnerships in place (e.g., whether a manufacturer and a contractor have been identified, whether draft financing agreements are in place); and
 - d) Professional and technical competence and qualifications (e.g., evidence that the Bidder has had experience developing and operating similar Projects under similar conditions, evidence that the Bidder has the ability to undertake environmental and social assessments).
- 45. All Bidders that “Pass” the eligibility criteria in the ITQ will be invited to take part in the Tender Stage.
- 46. There shall be up to two layers of criteria: “first order criteria” and “second order criteria”, and the evaluation of Qualification Responses will be mindful of the following:
 - a) To qualify, Bidders must “Pass” all first order criteria and second order criteria.
 - b) The Evaluation Panel may not complete the evaluation of Qualification Responses where the Qualification Response is found to have “Failed” against one or more first order criteria – in this case, the Qualification Response will be automatically rejected. For Bidders who have passed all first order criteria, the Evaluation Panel will complete the evaluation of all second order criteria, irrespective of whether the Qualification Response is found to have “Failed” against one or more of the second order criteria.
- 47. The ITQ will state which of the eligibility criteria will be treated as first/second order criteria.

X.3 Tender Stage

- 48. In the Tender Stage, the ITT will be issued to Bidders and will call upon Bidders to submit full technical and financial proposals in formats to be defined in the ITT.
- 49. The ITT will be published on the RA’s website, but participation will be restricted to the Bidders selected in the Qualification Stage.
- 50. Tenders shall include the following information as a minimum:
 - a) Technical details of the Project (or Projects within a Projects Lot) such as specifications of main components, proposed Site plans, other technical drawings, details of connection to the Grid, draft PPA (or draft transfer pricing arrangement), workplan and timeline;
 - b) Details of any environmental and social impact assessments undertaken at the Site(s) and mitigation plans;
 - c) Identification of benefits to the local economy (e.g., share of local workforce);
 - d) Confirmation that the Bidder’s compliance with the Qualification Stage criteria has not changed since their Qualification Response; and

- e) Firm Offtake Price (e.g., per MWh).
51. The Preferred Bidder will be selected on the basis of a multi-criteria evaluation.
52. The full list of evaluation criteria, scoring methodology, and weighting factors will be made clear and transparent in the ITQ and will be repeated in the ITT. The criteria would cover a range of aspects that may include but not limited to the following:
- a) Robustness of the technical solution proposed;
 - b) Firm Offtake Price (e.g., per MWh);
 - c) Environmental and social impact and mitigation;
 - d) Job creation;
 - e) Ownership;
 - f) Management control; and
 - g) Socio-economic development.
53. The weighting of evaluation criteria in the scoring methodology will be mindful of the key principles of the Bulk Generation Procurement Rules as listed in paragraph 11. As such, it is anticipated that the firm Offtake Price will have the largest weighting.
54. Additionally, the Evaluation Panel will invite Bidders for interviews during the evaluation of Tenders. In which case:
- 1. The Evaluation Panel will establish the provisional score of each Tender (as per Section XXII). Scores will not be disclosed to Bidders at this point.
 - 2. Bidders will then be invited for interviews with the Evaluation Panel. Interviews will aim to allow the Evaluation Panel to clarify any points in the Tender, collate further information, and review assumptions behind the Tender including the Offtake Price.
 - 3. If necessary, the Evaluation Panel may offer the opportunity to all Bidders invited for interviews to submit a revised Tender.
55. The Bidder whose Tender has the highest score after evaluation will be designated as the Preferred Bidder and will enter into an Implementation Agreement.
56. The Bidder with the second highest score will be designated as the Reserve Bidder. The RA will inform the Reserve Bidder of the decision. The Reserve Bidder shall be approached to develop the Project or Projects within Projects Lot if the Preferred Bidder becomes unable to develop the Project or Projects within Projects Lot or does not meet key deadlines as defined by the RA in the Solicitation Documents.

SECTION XI. OPEN TWO-STAGE COMPETITIVE TENDERING PROCESS

57. The Open Two-stage Competitive Tendering Process includes the following stages:
- 1 Qualification Stage; and
 - 2 Tender Stage.

XI.1 Qualification Stage

58. In the Qualification Stage, the ITQ will call upon Bidders to submit a Qualification Response. Otherwise, this stage is identical to that described in Section X.2 for the Open Three-stage Competitive Tendering Process.

XI.2 Tender Stage

59. The Tender Stage is identical to that described in Section X.3 for the Open Three-stage Competitive Tendering Process.

SECTION XII. RESTRICTED TWO-STAGE COMPETITIVE TENDERING PROCESS

60. The Restricted Two-stage Competitive Tendering Process includes the following stages:

- 1 Qualification Stage; and
- 2 Tender Stage.

61. This procurement method is restricted to a selection of potential Bidders. The list of pre-selected potential Bidders will be published by the Evaluation Panel, together with a justification for the selection.
62. Companies that have not previously submitted a Submission (or are not affiliated to a company who has) in the context of a prior bulk generation procurement process in Bermuda, cannot be included in the list of pre-selected potential Bidders.
63. The selection will be informed by Submissions made by potential Bidders (or companies affiliated to potential Bidders) in the context of previous bulk generation procurement processes in Bermuda.
64. Potential Bidders can only be pre-selected when the Evaluation Panel establishes that previous Submissions demonstrate sufficient evidence that they are qualified to participate in this new tendering process.

XII.1 Qualification Stage

65. In the Qualification Stage, the ITQ will request Bidders to provide information to demonstrate that they meet a comprehensive set of eligibility criteria. Otherwise, the Qualification Stage is identical to that described in Section X.2 for the Open Three-stage Competitive Tendering Process.

XII.2 Tender Stage

66. The Tender Stage is identical to that described in Section X.3 for the Open Three-stage Competitive Tendering Process.

SECTION XIII. UNSOLICITED PROPOSALS

67. As an exception to the requirement that the procurement of Projects or Projects Lot should follow a Competitive Tendering Process, the RA may consider Unsolicited Proposals for Projects or Projects Lot¹ according to the procedures set forth in this section, provided that such Unsolicited Proposals:
- a) Do not relate to a Project or Projects within a Projects Lot or procurement opportunity for which procurement procedures have been initiated or announced;
 - b) Are compatible with the procurement plan laid out in the most recent IRP; and
 - c) Are compatible with the Purposes of the EA as set out in Section 6 of the EA.
68. If the Proponent is BELCO through its Bulk Generation non-competitive business unit (including as it may be renamed in future and its successors and assigns), then, subject to paragraph 67, the Unsolicited Proposal will be assessed in the context of condition 20 of the Bulk Generation Licence as part of the next relevant retail tariff review. Provisions for the evaluation of capital expenditure plans are made in the Retail Tariff Methodology General Determination. Subsequent sections of this chapter are related to Unsolicited Proposals where the Proponent is not BELCO.
69. In other cases (not involving BELCO), Unsolicited Proposals shall be submitted to the RA and include the following information as a minimum:
- a) Project location, size, and technology;
 - b) Envisaged grid connection arrangements;
 - c) Draft land leasing arrangement;
 - d) Environmental and social considerations;
 - e) Envisaged financing plan; and
 - f) Proposed Offtake Price.
70. Upon review of the Unsolicited Proposal, the RA may either decide that:
- a) The Unsolicited Proposal is incomplete, in which case the RA will specify the information missing for the RA to make an informed decision;

¹ Section 40 of the EA requires the IRP to 'indicate recommendations regarding whether any resources will be procured through competitive bidding'. The underlying principle is to 'promote and preserve competition' (RAA section 12(a)) within the sector and is not intended to prohibit development of generation projects by Independent Power Producers outside of a Competitive Procurement Process. The consideration of Unsolicited Proposals is not contrary to the principle of promoting competition, provided it is in the interests of End-Users with respect to prices and affordability, and the adequacy, reliability and quality of electricity service. By providing an avenue for the submission and evaluation of Unsolicited Proposals, the RA seeks to provide additional opportunities to achieve the objectives of the IRP in addition to Competitive Procurement Processes without detriment to the principle of promoting and preserving competition. Future versions of the IRP will be drafted to make this clear.

- b) The Unsolicited Proposal is of interest, i.e., whether a detailed evaluation of the Unsolicited Proposal should be initiated. In this case, the RA will issue a Notification of Interest to the Proponent; or
 - c) The Unsolicited Proposal does not meet one or several criteria listed in paragraph 67 and hence is not of interest. The RA will inform the Proponent accordingly.
- 71. In the context of paragraph 70-b, a Notification of Interest is made without prejudice and does not represent a commitment from the RA to approve the Unsolicited Proposal after detailed evaluation.
- 72. The RA will share such Notification of Interest with the TD&R Licensee. The TD&R Licensee shall then engage with the Proponent to prepare the draft PPA and draft interconnection agreement for the Project.
- 73. In parallel, the RA will issue an Information Request in which the Proponent will be invited to submit a full technical and financial proposal including but not necessarily limited to the following:
 - a) Proposed Offtake Price;
 - b) The Proponent's background, shareholders or partners (as applicable);
 - c) A financing plan for the Project;
 - d) Qualifications and performance history in the execution of similar projects;
 - e) Evidence of the technical and economic feasibility of the Project;
 - f) Agreement in-principle to the draft PPA prepared by the TD&R Licensee;
 - g) Agreement in-principle to the draft interconnection agreement prepared by the TD&R Licensee;
 - h) Draft leasing agreement; and
 - i) Evidence that the proposed Project is in line with provisions from the most recent IRP.
- 74. The RA will evaluate the proposal after it has confirmed that it is complete. During the detailed evaluation, the RA will consider whether the proposal is consistent with:
 - a) The procurement plan as set out in the current IRP; and
 - b) The Purposes of the EA as set out in Section 6 of the EA.
- 75. Following a review of the Proponent's Submission and notifying the Proponent of the completeness of the information received, the RA will share the findings and decision with the Proponent and notify the Proponent whether the proposal is acceptable, and if so, issue an Implementation Agreement.

SECTION XIV. EVALUATION PANEL

- 76. The Evaluation Panel may consist of members of staff and other individuals appointed by the RA, including representatives from the Government, relevant industry stakeholders or other relevant knowledgeable persons from outside the RA.

77. The composition of the Evaluation Panel will be decided before the start of each procurement process.
78. The Chairperson of the Evaluation Panel will be appointed by the Board.
79. Representatives of and individuals employed by the TD&R Licensee shall not be appointed to the Evaluation Panel. More generally, any individual with a reasonable risk of conflict of interest in the procurement process shall not be appointed to the Evaluation Panel.
80. Any member of the Evaluation Panel who, over the course of the procurement process, is deemed to be at risk of having a conflict of interest or becomes unavailable for any other reason should be removed from the Evaluation Panel, at the discretion of the Board (in the case of the Chairperson) or the Chairperson of the Evaluation Panel (in the case of any other member). The removal of a member of the Evaluation Panel by the Chairperson of the Evaluation Panel must be approved by the Board to become effective.
81. The Evaluation Panel shall consist of a minimum of five members.
82. In the event that a member of the Evaluation Panel is removed or ceases to act for any reason, he/she shall be replaced if the number of members would be less than the required minimum.
83. Recommended decisions from the Evaluation Panel must be approved by the Board to be implemented.

SECTION XV. REQUESTS FOR CLARIFICATIONS ON SOLICITATION DOCUMENTS FROM POTENTIAL BIDDERS

84. The Solicitation Documents will include provisions for potential Bidders to raise clarification questions and invite potential Bidders to register to receive responses to clarification questions. The Solicitation Documents will state the deadline for submission of clarification questions.
85. At each Procurement Stage, the Evaluation Panel will provide all potential Bidders who have registered to receive responses to clarification questions with a consolidated list of questions and responses within a reasonable period after the clarification submission deadline. Questions from potential Bidders will be anonymised.

SECTION XVI. CLARIFICATION QUESTIONS FROM THE EVALUATION PANEL

86. Clarification questions may be raised by the Evaluation Panel during the Tender Stage of a Competitive Procurement Process.
87. After the expiration of the deadline for submissions of Tenders, the Evaluation Panel may issue an Information Request to one or several Bidders. The scope of such

Information Requests will be to address clarification questions to a specific Bidder and/or request additional information. The Information Request will state the deadline by which the Bidder should respond.

88. Responses to Information Requests and additional information received from Bidders will form part of their Tenders.

SECTION XVII. RECEIPT AND OPENING OF SUBMISSIONS RELATIVE TO COMPETITIVE PROCUREMENT PROCESSES

89. Submissions or responses to Information Requests, regardless of value and at any stage of the procurement procedure, will be opened in a secure environment. A minimum of two members of the Evaluation Panel will be present to open the Submissions or responses to Information Requests.
90. Unless otherwise specified in the Solicitation Documents, no Bidder is permitted to view the opening of Submissions or responses to Information Requests.
91. The Evaluation Panel will establish whether each Submission is complete and compliant with the guidance stipulated in the Solicitation Documents and the Procurement Rules. Submissions deemed to be incomplete and/or non-compliant will be rejected, and the Evaluation Panel will notify the Bidder or Proponent accordingly.
92. Other than under circumstances described in Section XVIII, the contents of Submissions will be kept strictly confidential and may only be disclosed to the members of the Evaluation Panel, the Minister, the Board, RA staff and/or consultants appointed to assist with the procurement process.
93. Tenders will be kept in a secure, safe place and remain unopened until the time and date specified for their opening, when applicable.

SECTION XVIII. TRANSFER OF INFORMATION BETWEEN THE EVALUATION PANEL AND THE TECHNICAL WORKING GROUP

94. Extracts of Submissions may be shared by the Evaluation Panel to the Technical Working Group in order to seek their advice. Extracts will be strictly limited to information deemed by the Evaluation Panel to be important to the successful implementation and operation of the Bidders' proposals.
95. Any information deemed to be commercially sensitive will be redacted before sharing with the Technical Working Group.
96. Extracts of Submissions shared with the Technical Working Group will be anonymised.
97. The contents of information provided to the Technical Working Group will be kept strictly confidential and may only be disclosed to the members of the Technical

Working Group, the Minister, the Board, RA staff and/or consultants appointed to assist with the procurement process.

SECTION XIX. CONFIDENTIALITY OF UNSOLICITED PROPOSALS

98. The contents of Unsolicited Proposals will be kept strictly confidential and may only be disclosed to the Minister, the Board, RA staff and/or consultants appointed to assist with the procurement process. Elements of Submissions deemed relevant by the RA to the preparation of the draft PPA and interconnection agreement may be shared with the TD&R Licensee as and when relevant.

SECTION XX. MODIFICATIONS TO SUBMISSIONS FROM CANDIDATES

99. The RA will not accept requests by any Bidder to modify or make corrections to Submissions or responses to Information Requests after the submission deadline has passed. Bidders may resubmit Submissions if this is done before the Submission deadline with a written instruction for the Evaluation Panel to disregard the previous Submission. In such a case, only the revised Submission will be considered for evaluation.

SECTION XXI. CANCELLATION OF COMPETITIVE TENDERS

100. The RA reserves the right to cancel a procurement process at any stage, including after having completed the evaluation of Tenders.

SECTION XXII. ASSESSMENT OF SUBMISSIONS FROM APPLICANTS

101. In every instance where the procurement procedure requires for Submissions from Bidders to be assessed, each Evaluation Panel member will assess Submissions independently and in line with assessment criteria included in the Solicitation Documents.
102. The Chairperson of the Evaluation Panel (or his/her authorized representative) will collate the assessments of Evaluation Panel members and a moderation meeting will be held to check that the assessment criteria have been applied consistently and eliminate any major discrepancies in the results.
103. Changes made to any assessment based on the moderation meeting will be recorded, including the reason for the change.
104. Following the completion of the assessment, the Evaluation Panel will prepare an Assessment Report summarising the process and results.
105. The Assessment Report will be used as the basis for the recommendation to the RA Board for the selection of shortlisted Bidders (in the EOI and Qualification Stages) and for the appointment of the Preferred Bidder and the Reserve Bidder (in the Tender Stage).

SECTION XXIII. IMPLEMENTATION AGREEMENT

106. When the procurement procedure is concluded, the Preferred Bidder (for Competitive Tendering) or approved Proponent (for Unsolicited Proposals) will be issued with an Implementation Agreement by the RA. The RA will send a copy of the Implementation Agreement to the TD&R Licensee.
107. The Implementation Agreement does not guarantee the RA's approval of the final PPA or transfer pricing arrangement with the TD&R Licensee nor the approval of a Bulk Generation Licence application.
108. The Implementation Agreement will be valid for a period to be stipulated in the Solicitation Documents. The validity may be extended at the discretion of the RA.
109. If by the expiration of this period, the RA is not provided with proof of Financial Close, then the RA is entitled to terminate the Implementation Agreement. Under Competitive Tendering Process it may then either:
 - a) Enter into an Implementation Agreement with the Reserve Bidder; or
 - b) Cancel the Competitive Tendering Process.

SECTION XXIV. SUBSEQUENT STEPS

110. The final PPA between the TD&R Licensee and a Preferred Bidder (for Competitive Tendering Processes) or an approved Proponent (for Unsolicited Proposals) shall be submitted for consideration by the RA as part of the standard application process for a Bulk Generation Licence as described in the EA and the Order setting the Application Process for Electricity Licences.
111. If the Preferred Bidder is the Bulk Generation Licensee related to the TD&R Licensee, then it would not need to apply for a Bulk Generation Licence assuming the Bulk Generation competitive business unit will fall under a valid Bulk Generation Licence.

SECTION XXV. DEBRIEFING BIDDERS

112. The RA will notify Bidders of the outcome of the evaluation at the conclusion of each stage of a Competitive Tendering Process.
113. If an unsuccessful Bidder requests further information, the RA may share the following details:
 - a) the names of the Bidders invited to the next Procurement Stage; and
 - b) reasons that the Bidder was unsuccessful.
114. If a Bidder is unsuccessful after completion of the evaluation of Tenders, the RA may share the following details:

- a) the Bidder's overall evaluation score(s);
- b) the name of the Preferred Bidder; and
- c) the Preferred Bidder's evaluation score(s).

115. Such details can only be shared after the Preferred Bidder and the Reserve Bidder have been notified of the results.

SECTION XXVI. RIGHT TO APPEAL, COMPLAINTS, AND DISPUTES

116. Complaints regarding any aspect of the Competitive Tendering Process may be reported to the Chairperson of the Evaluation Panel.

117. Complaints may be raised by Bidders and/or third parties, such as the TD&R Licensee and members of the public.

118. The previous two paragraphs are without prejudice to any right of appeal or legal challenge which any Bidder whose Submission was deemed unsuccessful at a Qualification Stage or Tender Stage of an ongoing procurement procedure might have.

SECTION XXVII. RECORDS RETENTION

119. The RA will retain all records pertinent to Tendering Processes for no less than six years following completion of the relevant Tendering Process.

120. The records shall include Solicitation Documents, Submissions, responses to Information Requests, other written communications between the RA and Bidders or Proponents, executed agreements and other relevant records.