

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

----- In the Matter of -----)
)
PUBLIC UTILITIES COMMISSION)
)
Instituting a Proceeding to)
Investigate Competitive Bidding)
for New Generating Capacity in)
Hawaii.)
_____)

DOCKET NO. 03-0372

DECISION AND ORDER NO. 23614

Filed August 28, 2007
At 11 o'clock A.M.

Karen Higashi
Chief Clerk of the Commission

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DIV. OF CONSUMER ADVOCACY
PUBLIC UTILITIES AND
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KAREN HIGASHI
Chief Clerk, Public Utilities
Commission, State of Hawaii.

Karen Higashi

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

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PUBLIC UTILITIES COMMISSION)	Docket No. 03-0372
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Investigate Competitive Bidding))	
for New Generating Capacity in)	
Hawaii.)	
_____)	

DECISION AND ORDER

By this Decision and Order, the commission approves the Code of Conduct Pertaining to the Implementation of a Competitive Bidding Process for New Power Supplies ("Code of Conduct") jointly filed by HAWAIIAN ELECTRIC COMPANY, INC. ("HECO"), HAWAII ELECTRIC LIGHT COMPANY, INC., and MAUI ELECTRIC COMPANY, LIMITED ("MECO") (collectively, the "HECO Companies"), on June 15, 2007.¹

I.

Background

A.

Procedural Background

On December 8, 2006, the commission filed Decision and Order No. 23121 in which it adopted a Framework for Competitive

¹The Parties are the HECO Companies, KAUAI ISLAND UTILITY COOPERATIVE ("KIUC"), HAWAII RENEWABLE ENERGY ALLIANCE ("HREA"), and the Department of Commerce and Consumer Affairs, Division of Consumer Advocacy ("Consumer Advocate").

Bidding as a mechanism for acquiring or building new energy generation in the State of Hawaii ("CB Framework").² Specifically, the CB Framework outlines a comprehensive mechanism for the electric utilities to acquire a future generation resource or a block of generation resources under the competitive bidding process. As part of the implementation process governing competitive bidding, the CB Framework and Decision and Order No. 23121 require the HECO Companies to file a Code of Conduct for the commission's review and approval.

On June 15, 2007, the HECO Companies filed their Code of Conduct.³ On June 22, 2007, KIUC informed the commission that "it takes no position on the HECO Companies' proposed Code of Conduct filed on June 15, 2007, and, therefore, has no comments to the same."⁴ On July 18, 2007, HREA filed its Comments on the HECO Companies' Code of Conduct.⁵ On August 1,

²Decision and Order No. 23121, filed on December 8, 2006, with the Framework for Competitive Bidding, dated December 8, 2006, attached.

³HECO Companies' Transmittal Letter; and Exhibits A - C, dated June 15, 2007. Exhibit A contains the HECO Companies' Code of Conduct, Exhibit B describes the process undertaken by the HECO Companies in developing the Code of Conduct, and Exhibit C describes the resource limitations of the HECO Companies, which result in the sharing of certain utility resources as part of the competitive bidding process.

⁴KIUC's letter, dated June 22, 2007, at 1.

⁵Comments of HREA on HECO's Proposed Code of Conduct for Competitive Bidding; and Certificate of Service, filed on July 18, 2007 (collectively, "HREA's Comments"). The Consumer Advocate did not submit any comments.

2007, the HECO Companies filed their Response to HREA's Comments.⁶

B.

Code of Conduct

The HECO Companies' Code of Conduct consists of four sections: (1) Purpose; (2) Definitions; (3) Implementation and Application of the Code of Conduct; and (4) General Rules.⁷

The first section of the Code of Conduct titled "Purpose" states:

This Code of Conduct Pertaining to the Implementation of a Competitive Bidding Process for New Power Supplies ("Code of Conduct") outlines the policies and general procedures under which the competitive bidding process for generation resources will be undertaken by the Company and its affiliates to ensure that the competitive bidding process is undertaken in a fair and unbiased manner, that all bidders have access to the same information to ensure no bidder has an unfair advantage, and that self-build and/or affiliate options do not have any unfair competitive advantage over third-party bids.

Code of Conduct, at 1.

The second section defines specific terms utilized in the Code of Conduct,⁸ while the third section, which pertains to

⁶HECO Companies' letter with Attachment, dated August 1, 2007 (collectively, "HECO Companies' Response"). The HECO Companies filed their Response pursuant to the commission's request. See Commission's letter, dated July 19, 2007.

⁷The term "Company," as utilized in the Code of Conduct, collectively refers to the HECO Companies.

⁸Some of the terms utilized in the Code of Conduct include:

Company RFP - A written request for proposal issued by the electric utility to solicit bids from interested

the implementation and application of the Code of Conduct, provides:

Employees of the Company and any affiliates who will be involved in the competitive bidding process must comply with the Code of Conduct. Members of the Company RFP Team, Self-build Team, and affiliates who may bid to provide a generation resource option must implement the Code of Conduct in order to be eligible to evaluate bids or participate in the development and submission of a Company or affiliate resource option. The Code of Conduct addresses: (1) communication requirements and procedures associated with the relationship between utility employees; (2) communication requirements and procedures associated with the relationship between utility RFP personnel and bidders; and (3) communication requirements associated with the relationship between Company management and the various entities involved in the competitive bidding process.

third-parties, and where applicable from the utility or its affiliate, to supply a future generation resource or a block of generation resources to the utility pursuant to the competitive bidding process.

Company RFP Team - Company employees and consultants who prepare and evaluate responses to a Company RFP.

Confidential Information - Includes any Confidential Resource Proposal Information and Confidential RFP Process Information

Confidential Resource Proposal Information - Any non-public information developed and provided by the Company Self-build Team, its affiliates or third-party bidders during the RFP process (such non-public information may include, for example, the identity of competing bidders, and their technical, trade or financial information).

Confidential RFP Process Information - Any non-public information regarding the RFP process developed and used during the competitive bidding solicitation process.

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Self-build Team - Company employees and consultants who prepare a proposal to be submitted by the Company in response to a Company RFP.

Code of Conduct, at 1-2.

The Code of Conduct also includes the procedures for addressing cases where resources and information may be shared among the Self-build Team and Company RFP Team. While the Company will make every reasonable effort to develop internally separate teams for evaluating the bids and developing the self-build option, the small size of the Company and limitation of resources generally will require specialized services, information exchange and sharing of resources in certain limited circumstances, such as in the course of resource planning activities. This Code of Conduct does not apply to communications and information shared between utility employees in the normal course of their employment prior to the effective date of Commission approval of the Code of Conduct.

Code of Conduct, at 2 (emphasis added).

The fourth section sets forth fifteen General Rules to govern the conduct of the utility's employees with respect to the competitive bidding process.⁹ In general, Rules 1, 2, 5, and 6, which address Part IV.H.9.c(i) of the CB Framework, require:

1. Any utility employee or consultant who participates in the competitive bidding process as a member of the Company RFP Team that evaluate bids, the Self-build Team that prepares a self-build bid option, or as a representative of a utility affiliate that prepares an affiliated bid option, is

⁹Specifically: Rule 1, Acknowledgement of Code of Conduct; Rule 2, Core Teams; Rule 3, Duty Not to Disclose Confidential Information Across Teams; Rule 4, Work Locations; Rule 5, Organizational Charts; Rule 6, Managing of Shared Resources; Rule 7, Access to Information During Bidding Period; Rule 8, Duty Not to Disclose Confidential Resource Proposal Information During RFP Process; Rule 9, Prohibition of Self-Build Team and Affiliates from Advance Disclosure of Confidential Resource Proposal Information to Company RFP Team; Rule 10, Treatment of Information Requests from Self-Build Team; Rule 11, No Preferential Treatment; Rule 12, Applicability of Code; Rule 13, Rules for Evaluators; Rule 14, Company Officer Certification of Code of Conduct Compliance; and Rule 15, Term.

required to comply with the procedures set forth in the Code of Conduct.¹⁰

2. Both the Company RFP Team and Self-build Team will identify core team members. The core members of each team will be permanent team members that will have no involvement with other teams in any defined team functions associated with the RFP.¹¹

3. With respect to the sharing of certain utility resources between both teams, in particular, select utility staff, Rule 6 provides:

Managing of Shared Resources. Certain Company resources, such as select staff from various functional areas of the Company (e.g. generation and transmission planning, engineering, system and power plant operations, environmental, financial analysis, risk management, etc.) that are not core team members, may be treated as a shared resource to perform services for the Company RFP Team and to carry on their regular functions throughout the resource planning process (including the development of the utility's Parallel Plan or Contingency Plan as defined in the Framework), which may require communication with or services performed for the Self-build Team. Any information received by employees serving as a shared resource from their participation on one team (either the Company RFP Team or Self-build Team) will not be provided to core members on the other team or to other bidders, except through the formal RFP communication process In any case where information or resources are required to be provided by one team to another, all communications will be directed in writing through the Director of Generation Bidding and a copy of the request and related communications

¹⁰Code of Conduct, Rules 1 and 2, at 3.

¹¹Code of Conduct, Rule 2, at 3; see also id. Rule 5, at 3 (organizational charts for the Company RFP Team and the Self-build Team will be developed and provided to the Independent Observer, with the core team members specifically identified by name and position).

and information will be provided to the Independent Observer.

Code of Conduct, Rule 6, at 3 - 4.

In addition, Rules 3, 4, 8, 9, and 12 address Part IV.H.9.c(ii) of the CB Framework, and require the following:

4. Members of the Company RFP Team and the Self-build Team must make reasonable efforts to keep all information pertaining to the competitive bidding process confidential.¹²

5. While members of the Company RFP Team may work with members of the Self-build Team or with an affiliate on other projects not related to the Company RFP, they "are precluded to the extent possible from discussing Confidential Information with the Self-build Team and any affiliates except in accordance with the procedures outlined in this Code of Conduct and the RFP, or with any Company employee, individual or entity without a business need to know[]" basis.¹³

6. In response to a Company RFP, the Self-build Team and any affiliate bidder are prohibited from providing core team members of the Company RFP Team with any Confidential Resource Proposal Information pertaining to the development of a self-bid or affiliated option, until after the Company's RFP is officially issued by the utility.¹⁴ Thereafter:

¹²Code of Conduct, Rule 4, at 3; see also id., Rule 12, at 5 (any employee or consultant who takes part in the competitive bidding process shall comply with the requirements governing the treatment of Confidential Information obtained during the competitive bidding process).

¹³Code of Conduct, Rule 3, at 3.

¹⁴Code of Conduct, Rule 9, at 4.

Duty Not to Disclose Confidential Resource Proposal Information During RFP Process. All Confidential Resource Proposal Information shall be held in confidence during the RFP evaluation and selection process and negotiation of contracts with selected bidders (if necessary), and shall not be discussed or exchanged by the Company RFP Team with any party except the bidder providing the information, Company management personnel responsible for resource decisions, Company RFP Team members, the Independent Observer hired by the Company, and the Commission and the Consumer Advocate, and their respective staffs and consultants. Dissemination of such Confidential Resource Proposal Information shall be limited, to the extent possible, to those with a business need to know.

Code of Conduct, Rule 8, at 4.

Rules 7, 10, 11, and 13 address Part IV.H.9.c(iii) of the CB Framework

7. Members of the Self-build Team and affiliate bid team are prohibited from having access to the RFP information before it is distributed to all potential bidders.¹⁵ In addition, "[t]he Company RFP Team will treat all requests from the Self-build Team and affiliate bidder for information pertaining to the Company RFP in the same manner as requests received from non-affiliate entities. The Self-build Team and the affiliate will be required to submit all questions in writing and will receive a response via the website or other means specified in the RFP, as would any other bidders."¹⁶

8. "The Company RFP Team, when evaluating proposals, will give all proposals the same consideration. Self-build options and affiliate bids will not be given any

¹⁵Code of Conduct, Rule 7, at 4.

¹⁶Code of Conduct, Rule 10, at 4.

preferential or discriminatory treatment."¹⁷ Moreover, any employee that participates in the bid evaluation process must make "his/her decision based on the merits of the proposal and irrespective of all partisan considerations[,] and "must hold in confidence all Confidential Information obtained through the bidding process[.]"¹⁸

In addition, Rules 14 and 15, which address Part IV.H.9.d of the CB Framework, and D&O No. 23121, state:

9. A Company officer shall: (A) have the written authority and obligation to enforce the Code of Conduct; and (B) certify, by affidavit, "Code of Conduct compliance by all employees participating in a specific RFP process after each specific RFP process ends."¹⁹

10. The Code of Conduct shall remain in effect with respect to a specific RFP process only until the final contract with the successful bidder is executed.²⁰

C.

HECO Companies' Position

The HECO Companies developed their Code of Conduct with the assistance and input of their consultant, Mr. Wayne Oliver, a principal of Merrimack Energy Group, Inc., with extensive experience in developing and monitoring compliance Codes of

¹⁷Code of Conduct, Rule 11, at 5.

¹⁸Code of Conduct, Rule 13, at 5.

¹⁹Code of Conduct, Rule 14, at 5.

²⁰Code of Conduct, Rule 15, at 5.

Conduct for electric utilities.²¹ The HECO Companies state that the Code of Conduct is designed to ensure the fairness and integrity of the competitive bidding process, and complies with the requirements set forth in Part IV.H.9 of the CB Framework. Moreover, "[f]urther details with respect to the requirements and actions for a specific RFP process [will] be included in the Procedures Manual included in the RFP package[,]" consistent with Part IV.H.9.a(iii) of the CB Framework.²²

The HECO Companies state that, as part of their commitment to implementing the CB Framework, a new Generation Bidding Division was created to lead the competitive bidding efforts for HECO, HELCO, and MECO. The Generation Bidding Division, the HECO Companies explain, will

²¹According to the HECO Companies:

Mr. Oliver has (1) assisted a number of utilities in the development and implementation of competitive bidding processes and associated RFPs for long-term supply-side resources and renewable resources, (2) served as Third-party Evaluator or Independent Monitor for a number of power solicitation or competitive bidding processes, (3) served as Project Manager responsible for designing and developing supply side RFPs for several electric utilities, and (4) assisted in the preparation of power supply bids on behalf of utility and non-utility clients for a number of utility solicitations.

HECO Companies' Transmittal Letter, dated June 15, 2007, at 3 n.1. The commission also notes that Mr. Oliver testified as an expert witness for the HECO Companies during the panel hearings held by the commission in December 2005.

²²HECO Companies' Transmittal Letter, dated June 15, 2007, at 3. Part IV.H.9.a(iii) of the CB Framework provides that "the utility shall develop and follow a Procedures Manual, which describes: (1) the protocols for communicating with bidders, the self-build team, and others; (2) the evaluation process in detail and the methodologies for undertaking the evaluation process; (3) the documentation forms, including logs for any communications with bidders; and (4) other information consistent with the requirements of the solicitation process."

"ensure that the acquisition of new generating resources complies with the Framework . . . [and] will coordinate the efforts of various cross-functional teams in the implementation of competitive bidding processes and will interface with the Commission, the Consumer Advocate, independent observers, and prospective bidders in these processes."²³

The HECO Companies conclude by stressing the importance of implementing the Code of Conduct "as soon as practical in order to facilitate the conduct of future competitive bidding processes. At the same time, the HECO Companies, the Commission and other participants in upcoming competitive bidding processes will have the opportunity to evaluate how the Code of Conduct works in practice, and propose or implement appropriate changes."²⁴

D.

HREA's Comments and the
HECO Companies' Response

By its Comments filed on July 18, 2007, HREA sought the HECO Companies' clarification of certain matters related to the Code of Conduct. Specifically, HREA requested clarification on the definition of Confidential Resource Proposal Information. The HECO Companies, in their Response filed on August 1, 2007, clarified that while the objective is to treat all of the information submitted by bidders in response to an RFP as

²³HECO Companies' Transmittal Letter, dated June 15, 2007, at 5-6.

²⁴HECO Companies' Transmittal Letter, dated June 15, 2007, at 7 (footnote and text therein omitted).

confidential, there could be information and data submitted by the bidders in their proposals that are already available in the public domain, such as company annual reports, informational brochures, and marketing materials, that will not be treated as confidential. In addition:

. . . the RFP would specify the extent to which bid information would be subject to disclosure, to whom it could be disclosed, and the conditions under which it could be disclosed (such as pursuant to Protective Order). Confidential bid information (including information with respect to unsuccessful bids) would be shared outside the Company and its agents with the [Independent Observer] pursuant to the terms of the [Independent Observer's] contract with the Company, and with the Commission and the Consumer Advocate pursuant to the terms of a Protective Order, in order to allow them to review and assess the fairness and reasonableness of the bid evaluation and selection process. The terms and conditions of any resulting contracts with successful bidders would become public information when applications for approval of the contracts were filed (although confidential information, if any, submitted in support of the applications, such as financing information, would be filed pursuant to Protective Order). Bidders would consent to the treatment of the information through participation in the RFP process.

HECO Companies' Response, Attachment, at 2.

HREA also sought clarification on the concept of core team members. In response, the HECO Companies stated that for Rule 2, the number of core team members on the Self-build Team is expected to range from several employees to larger teams of employees plus consultants, depending on the type, complexity, and magnitude of the proposed project. The Self-build Team leader will be a core member of the Self-build Team. In addition, the HECO Companies anticipate that the term of the

core team members "will be for the duration of the RFP process, which is through the time that the contracts are awarded or as otherwise identified in [Rule] 15."²⁵

HREA also sought clarification on the concept of enforcement of the Code of Conduct. In response, the HECO Companies clarified that for Rule 14, the Company officer charged with the responsibility for complying with the Code of Conduct will be at the vice president level with a direct reporting relationship to the Company president or a senior vice president. Moreover, "[e]mployees found in violation of the Code of Conduct will be subject to disciplinary actions, up to and including termination."²⁶ In addition, the Independent Observer's role with respect to the Code of Conduct is specified in Part III.C.2 of the CB Framework, including the Independent Observer's duty to monitor the electric utility's adherence to the Code of Conduct.

II.

Discussion

Part III.A.4 of the CB Framework states:

4. The utility shall submit to the Commission for review and approval (subject to modification if necessary), a Code of Conduct described in Part IV.H.9.c, below, prior to the commencement of any competitive bidding process under this Framework.

CB Framework, Part III.A.4.

²⁵HECO Companies' Response, Attachment, at 4.

²⁶HECO Companies' Response, Attachment, at 4.

Part IV.H.9 of the CB Framework, in turn, states in relevant part:

9. Where the electric utility is responding to its own [request for proposal ("RFP")], or is accepting bids submitted by its affiliates, the utility will take additional steps to avoid self-dealing in both fact and perception.

.

- b. The following tasks shall be completed whenever the utility or its affiliate is seeking to advance a resource proposal, including: . . . (ii) the utility shall follow the Code of Conduct
- c. The Code of Conduct shall be signed by each utility employee involved either in advancing the self-build project or implementing the competitive bidding process, and shall require that:
- (i) Whenever staffing and resources permit, the electric utility shall establish internally a separate project team to undertake the evaluation, with no team member having any involvement with the utility self-build option;
 - (ii) During the RFP design and bid evaluation process, there shall be no oral or written contacts between the employees preparing the bid and the electric utility's employees responsible for bid evaluation, other than contacts authorized by the Code of Conduct and the RFP;
 - (iii) Throughout the bidding process, the electric utility shall treat all bidders, including its self-build bid and any electric utility affiliate, the same in terms of access to information, time of receipt of information, and response to questions.
- d. A company officer, identified to the Independent Observer and the Commission, shall have the written authority and

obligation to enforce the Code of Conduct. Such officer shall certify, by affidavit, Code of Conduct compliance by all employees after each competitive process ends.

- e. Further steps may be considered, as appropriate, or ordered by the Commission.

CB Framework, Part IV.H.9.

The commission, in its adoption of the CB Framework, including Part IV.H.9.c, governing the Code of Conduct, noted:

While sub-paragraph [(ii)] remains unchanged, the commission clarifies that "the prohibition on communication between employees is limited to communication concerning the RFP. The employees should be able to communicate on matters unrelated to the RFP (even when the RFP is active)." Furthermore, as explained by the HECO [Companies], "[t]he Code of Conduct then can spell out appropriate means to control communications relating to the RFP between members of the RFP development and bid evaluation team, and the members of the utility bid team, and that the members of the RFP development and bid evaluation team, and members of the utility bid team can communicate with each other on matters not related to the RFP, even while the RFP is active.

With respect to the Code of Conduct, the HECO [Companies], citing to a provision in Southwestern Electric Power Company's (Louisiana) ("SWEPCO") Code of Conduct, explain that: (1) SWEPCO's Code of Conduct is effectively limited to the duration of the request for proposal process; and (2) "[a] similar provision in the Code of Conduct for the HECO Companies would be appropriate." The commission concurs with the HECO [Companies'] assessment of including a similar provision in their Code of Conduct for the commission's review and approval.

Decision and Order No. 23121, at 30-31 (footnotes and citations therein omitted).

Here, the commission finds that the HECO Companies' Code of Conduct appears consistent with the applicable

requirements set forth in Part IV.H.9 of the CB Framework, and the pertinent rulings made by the commission in its adoption of the CB Framework by Decision and Order No. 23121.

The HECO Companies' ability to internally share their resources (specifically, certain staff) as part of the competitive bidding process was the subject of much deliberation by the commission. Initially, the commission proposed that "[t]he electric utility shall establish internally a separate project team to undertake the evaluation."²⁷ In response, the HECO Companies urged the commission to replace "shall" with "may," given their concerns that:

. . . (1) a shortage of skilled staff in many areas exists, including engineering; (2) only a small pool of available candidates who have the experience and knowledge to run complex utility models exists; and (3) their current staffing levels make it impractical, and in some cases impossible, to establish separate bid and evaluation teams.

Decision and Order No. 23121, at 28.

Upon reflection, the commission amended Part IV.H.9.c(i) of the Proposed CB Framework, such that Part IV.H.9.c(i) of the CB Framework now reads as follows:²⁸

(i) [The]Whenever staffing and resources permit, the electric utility shall establish internally a separate project team to undertake the evaluation[;], with no team member having any involvement with the utility self-build option;

²⁷Decision and Order No. 22588, filed on June 30, 2006, at 43, and the commission's Proposed CB Framework, dated June 2006, attached thereto, at 26.

²⁸Deletions are bracketed, additions are underscored.

Rules 1, 2, and 5 provide for the designation of separate teams (Company RFP Team vs. the Self-build Team) for the duration of a particular RFP process, as well as the designation of permanent, core team members within each team that will have no involvement with other teams in any defined team functions associated with the RFP.²⁹ The establishment of a separate Company RFP Team to undertake the bid evaluation process (including the designation of core team members), with certain non-core utility staff having the ability to perform designated services for both teams (sharing of resources), does not per se violate Part IV.H.9.c(i) of the CB Framework, given the professional staffing shortage concerns expressed by the HECO Companies in this proceeding.³⁰ That said, the commission encourages the HECO Companies to continue their efforts to internally establish a separate project team to undertake the bid evaluation process, with no team member having any involvement with the utility's self-build option, "[w]henever staffing and resources permit[.]"

Rules 3, 4, 8, 9, and 12 are designed to minimize any contacts between the Company RFP Team and the Self-build Team during the RFP design and evaluation process, and incorporate the utility employees' duty not to disclose Confidential Information

²⁹As noted by the HECO Companies, the Procedures Manual developed for a specific RFP will provide additional details of the separation process. See HECO Companies' Transmittal Letter, dated June 15, 2007, at 4.

³⁰HREA, in its Comments, also concurs with the HECO Companies' assessment that it may be difficult for HECO to staff two separate, independent teams for the procurement process. See HREA's Comments, at 2.

to the utility employees of a different team; provided that employees of different teams are allowed to communicate with each other on matters not related to the RFP, even while the RFP is active. These provisions appear consistent with Part IV.H.9.c(ii) of the CB Framework, as clarified by the commission in Decision and Order No. 23121.

Rules 7, 10, 11, and 13 comply with Part IV.9.c(iii) of the CB Framework, by treating all bidders on equal footing, with no preferential treatment accorded to an electric utility's bid, whether by self-bid or through an affiliate. Rule 14, meanwhile, virtually restates without change the language set forth in Part IV.9.d of the CB Framework. Lastly, Rule 15 is consistent with the commission's ruling in Decision and Order No. 23121, which effectively limits the duration of the Code of Conduct to the completion of a specific RFP process.

The underlying purpose of the Code of Conduct is to preserve the fairness and integrity of the competitive bidding process by ensuring that the utility, as a potential bidder (whether as a self-build option or through an affiliate), gains no preferential treatment or unfair advantage over other non-utility bidders. The Code of Conduct proposed by the HECO Companies, together with the list of qualified Independent Observer candidates previously approved by the commission on June 22, 2007,³¹ represents a sound foundation that "should promote confidence in the procurement process, thereby

³¹Decision and Order No. 23503, filed on June 22, 2007.

encouraging interested, prospective participants to submit bids."³² Accordingly, the commission approves the HECO Companies' Code of Conduct, pursuant to Part III.A.4 of the CB Framework.³³

III.

Order

THE COMMISSION ORDERS:

The Code of Conduct filed by the HECO Companies on June 15, 2007, is approved.

DONE at Honolulu, Hawaii AUG 28 2007.

PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By Carlito P. Caliboso
Carlito P. Caliboso, Chairman

By John E. Cole
John E. Cole, Commissioner

APPROVED AS TO FORM:

Leslie H. Kondo
By
Leslie H. Kondo, Commissioner

Michael Azama
Michael Azama
Commission Counsel
03-0372.eh

³²Decision and Order No. 23503, at 9.

³³Concomitantly, "the HECO Companies, the Commission and other participants in the upcoming competitive bidding processes will have the opportunity to evaluate how the Code of Conduct works in practice, and propose or implement appropriate changes." HECO Companies' Transmittal Letter, dated June 15, 2007, at 7 n.9 (citing to Part III.c.2.a(iv)(2) of the CB Framework, which provides that, after the utility's procurement selection is completed, the Independent Observer will provide the commission with recommendations for improving future competitive bidding processes).

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 23614 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

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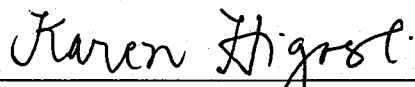
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Certificate of Service
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DATED: AUG 28 2007