



# **PROCUREMENT REGULATIONS FOR ELECTRICITY SECTOR LICENSEES, 2020 FOR PUBLIC CONSULTATION**

## **Statement of Results and Final Decision**

ES 06/2020

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**UTILITIES REGULATION & COMPETITION AUTHORITY**

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## 1 Introduction

The Utilities Regulation and Competition Authority (“URCA”) issues this Statement of Results and Final Decision to its **“DRAFT PROCUREMENT REGULATIONS FOR ELECTRICITY SECTOR LICENSEES, 2020 FOR PUBLIC CONSULTATION”** (ES 05/2020).<sup>1</sup> The primary role of URCA is the regulation of the sector in accordance with the goals, objectives and principles underpinning the national energy and electricity sector policies.<sup>2</sup> Fundamental to these are the encouragement of competition and the provision of least cost electricity supplies to consumers,<sup>3</sup> which means charges must be reasonable and reflect efficiently incurred costs.<sup>4</sup> As licensees primarily incur costs through their procurement activities, URCA has drafted regulations to address the same.

Concurrently with the publication of this Statement of Results and Final Decision, URCA also publishes its **“Procurement Regulations for Electricity Sector Licensees, 2020”** (ES 07/2020). Licensees are required to appropriately coordinate their planning, investment, and procurement processes with a view to providing adequate, safe and efficient service to their customers at approved rates. The regulations establish the framework for procurement by licensees of generation resources, transmission, distribution, storage and supply assets and services in order to ensure that licensees are at all times compliant with their economic purchasing obligations under their respective licenses.

### 1.1 Consultation Process

URCA considers that the proposed procurement regulations are likely to have a significant impact in the Electricity Sector and be of particular significance to its licensees. URCA intends for the regulatory measures to be efficient and proportionate to their purpose, fair, and non-discriminatory. Accordingly, URCA invited written comments from members of the public, licensees and interested parties on the draft regulations through a public consultation process.

URCA published the Consultation Document<sup>5</sup> on 2 April 2020 and established 5 May 2020 as the closing date for the submission of responses. At the request of Bahamas Power and Light (BPL) the closing date was extended to 11 May 2020. The Consultation Document included the draft procurement regulations and sought respondents’ views on each section of the regulations through a series of questions. URCA considered any comments it received from persons which were made within the timeframe and manner specified in the Consultation Document and were not withdrawn by the person.

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<sup>1</sup> [www.urbahamas.bs/consultations/es-05-2020-draft-procurement-regulations-for-electricity-sector-licensees-2020-for-public-consultation/](http://www.urbahamas.bs/consultations/es-05-2020-draft-procurement-regulations-for-electricity-sector-licensees-2020-for-public-consultation/)

<sup>2</sup> Electricity Act 2015, section 37(1)

<sup>3</sup> Electricity Act 2015, section 5

<sup>4</sup> Electricity Act 2015, section 38(1)(a)

<sup>5</sup> [www.urbahamas.bs/consultations/es-05-2020-draft-procurement-regulations-for-electricity-sector-licensees-2020-for-public-consultation/](http://www.urbahamas.bs/consultations/es-05-2020-draft-procurement-regulations-for-electricity-sector-licensees-2020-for-public-consultation/)

## **1.2 Responses to the Consultation**

On or before 11 May 2020 URCA only received a response from BPL. URCA thanks BPL for its response. The full text of the submission can be found on URCA's website at [www.urbahamas.bs](http://www.urbahamas.bs).

## **1.3 Purpose of this Statement of Results and Final Decision**

In this Statement of Results and Final Decision, URCA:

- Summaries the written responses received to the Consultation Document;
- Outlines URCA's responses and analysis to the written comments submitted by the respondent; and
- Sets forth URCA's review and Final Decision to the responses, issues and questions in the Consultation Document.

## **1.4 Structure of the Remainder of this Document**

The remainder of this document is set out as follows:

- Section 2 explains the regulatory framework through which URCA is taking this action.
- Section 3 provides a summary of comments received and URCA's responses; and
- Section 4 sets out URCA's conclusions and next steps.

## **2 Regulatory Framework**

Per the Electricity Act (EA) URCA is empowered to issue regulations.<sup>6</sup> The objective of establishing procurement regulations is to ensure a consistent, efficient, fair, and transparent approach in the economic acquisition of goods, work, and services by licensees in the electricity sector. The sector is made up of monopolies and market forces cannot be relied upon to ensure competitive behavior in the pricing and delivery of services to consumers. Consequently, the regulations are intended to establish a (minimum) set of rules that, when complied with, engender trust in the process and result in the best economic outcome.

As outlined in the Introduction, these regulatory measures are made with a view to implementing the main goal and governing principles and objectives of the sector policy and electricity supply regime.<sup>7</sup> While the principles underpinning the approach to the procurement regulations are covered generally throughout the EA, section 38(1)(c) is more specific. It states, part of URCA's functions and powers, under the EA, is to establish rules and approve competitive processes for procurement of power generation resources by public electricity suppliers, and ensure such rules are fair, consistent and compatible with the objectives and principles of the electricity sector and national energy policies.<sup>8</sup>

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<sup>6</sup> Electricity Act 2015, section 38(3)(c)

<sup>7</sup> Electricity Act 2015, section 7(1)

<sup>8</sup> Electricity Act 2015, section 38(1)(c)



Licenses contain conditions for the “economic purchasing of goods and services.” These licenses also state that “The Licensee shall, if requested by URCA, submit its procedures for procurement to URCA for consideration.” By establishing procurement regulations, licensees should have a clear understanding of the standard to which their internal procedures must comply.

### **3 Summary of Comments and URCA’s Responses**

In this section, URCA summarizes and responds to the substantive comments received on the consultation, as follows:

- Section 3.1 – General comments received on the consultation; and
- Section 3.2 – Specific responses to the consultation questions

URCA notes that any comments raised and not answered does not signify agreement in whole or part with said comments, or that URCA has not considered the comment or that the comment is without merit.

#### **3.1 General Comments Received on the Consultation**

##### BPL’s comments

BPL supports URCA’s decision to establish procurement regulations with a view to engendering trust in Licensees’ processes and achieving the best economic outcome. BPL considers that the regulations should be limited to the procurement of generation resources in keeping with section 38(1)(c) of the Electricity Act.

##### URCA’s response to comments received

URCA does not agree with the restriction in the scope of the Procurement Regulations proposed by BPL and points out the following:

The primary role of URCA is the regulation of the sector in accordance with the goals, objectives and principles underpinning the national energy and electricity sector policies. Fundamental to these are the encouragement of competition and the provision of least cost electricity supplies to consumers, which means charges must be reasonable and reflect efficiently incurred costs. As licensees primarily incur costs through their procurement activities, URCA has drafted regulations to address the same.

URCA is empowered to issue regulations. The objective of establishing procurement regulations is to ensure a consistent, efficient, fair, and transparent approach in the economic acquisition of goods, work and services by licensees in the electricity sector. The sector is made up of monopolies and market forces cannot be relied upon to ensure competitive behavior in the pricing and delivery of services to consumers. Consequently, the regulations are intended to

establish a (minimum) set of rules that, when complied with, engender trust in the process and result in the best economic outcome.

The regulatory measures are made with a view to implementing the main goal and governing principles and objectives of the sector policy and electricity supply regime. While the principles underpinning the approach to the procurement regulations are covered generally throughout the EA, section 38(1)(c) is more specific. It states, part of URCA's functions and powers, under the EA, is to establish rules and approve competitive processes for procurement of power generation resources by public electricity suppliers, and ensure such rules are fair, consistent and compatible with the objectives and principles of the electricity sector and national energy policies. In addition, licenses contain conditions for the "economic purchasing of goods and services." The licenses state that "The Licensee shall, if requested by URCA, submit its procedures for procurement to URCA for consideration." By establishing procurement regulations, licensees should have a clear understanding of the standard to which their internal procedures must comply.

#### URCA's final decision

The Procurement Regulations establish the framework for procurement by licensees of generation resources, transmission, distribution, storage and supply assets and services

- (1) The Procurement Regulations shall apply to procurement by licensees where the total value of goods, works and services to be procured is estimated to be at least BSD 500,000 or the total generation capacity, whether new or replacement, to be so procured is at least 1 MW, except –
  - (a) as specified in section 22 of the regulations, it shall also apply to procurement by licensees where the value of relevant contracts is between BSD 50,000 and 500,000, in respect of reporting requirements only,
  - (b) procurement by independent power producers, and
  - (c) procurement by licensees that are not connected to the grid, irrespective of the installed generation capacity.
- (2) Procurement of goods, works and services constitutes, in whatever combination thereof, procurement of power generation resources, transmission, distribution, storage and supply assets (or services in regard thereof) if it results in acquisition by the licensee of:
  - (a) a generation, transmission, distribution, storage and/or supply facility (or services in regard thereof) and whether it is designed, built, assembled, integrated, commissioned and/or operated by the licensee or by one or several contractors pursuant to one or several contracts where such contracts are designed to serve one business purpose of the licensee, or
  - (b) electric energy or capacity pursuant to a power purchase agreement or any other contractual arrangement (such as a generation lease or similar arrangement) with the contractor having the same business purpose or function for the licensee.



## 3.2 Responses Received to Specific Consultation Questions

### Procurement Regulations, section 2 – Definitions

Key definitions are included to avoid ambiguity in interpreting the regulations. These definitions complement those contained in the EA.<sup>9</sup>

*Question 1: What additional definitions, if any, should be included in the regulations?*

#### BPL's comments

BPL suggests including a definition for "power generation resources" to avoid any confusion as to the applicability of the proposed regulations. BPL also expressed uncertainty as to whether the Procurement Regulations apply to rental generation.

#### URCA's response to comments received

"Generation resource" is defined in the EA section 2(1). Hence URCA does not consider it necessary to include the definition in the Procurement Regulations. "Procurement" is defined in Procurement Regulations section 2. By extension this definition specified what is covered by the Procurement Regulations subject to further limitations prescribed in the main body of the Procurement Regulations. Per the preceding comment, the Procurement Regulations are applicable to the procurement of rental generation.

In addition to the general explanation above, the scope of application is established in section 4 (Application of Regulations) of the Procurement Regulations which addresses, *inter alia*, various options for the acquisition of power generation resources.

#### URCA's final decision

URCA considers that where used in the Procurement Regulations the term "power generation resources" is well understood. Hence, URCA does not consider it necessary to include a separate definition for the same.

### Procurement Regulations, section 3 – Purpose of Regulations

The draft regulations are intended to provide a procurement framework to which licensees' internal procurement processes shall comply.

*Question 2: Do you agree with the purpose of the regulations?*

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<sup>9</sup> Electricity Act 2015, section 2

### BPL's comments

BPL agrees with the purpose of the Procurement Regulations.

### URCA's response to comments received

URCA notes BPL's agreement with the purpose of the Procurement Regulations

### URCA's final decision

No action required.

## **Procurement Regulations, section 4 – Application of Regulations**

This section sets out to whom and the conditions under which the regulations apply.

*Question 3: Do you agree with the application of the regulations?*

### BPL's comments

BPL considers that the application of the draft Procurement Regulations is broader than the EA intended and that the regulations should be limited to the procurement of generation resources.

### URCA's response to comments received

BPL raised the same concern in its general comments. URCA responded to the concern in section 3.1 above on General Comments.

### URCA's final decision

See URCA's decision in section 3.1 above.

## **Procurement Regulations, section 5 – Implementation of Regulations by Licensees**

Licensees must comply with various timeframes in relation to the implementation of the regulations.

*Question 4: Do you think the timeframes proposed for the implementation of the regulations are reasonable?*



### BPL's comments

BPL considers that the requirement for the implementation of the Procurement Regulations to take place within 60 days after coming into force is too short. BPL is of the opinion that a 90-day implementation is more reasonable.

### URCA's response to comments received

URCA notes BPL's request, for the requirement in the Procurement Regulations section 5, for the timeframe for the submission of the licensee's draft procurement rules to be 90 days and not 60 days. URCA expects that a licensee operating in the sector (or applying to operate in the sector) will have procurement rules they operate by which can be amended (if necessary) to comply with the Procurement Regulations. Hence, URCA is of the opinion the timeframes in the Procurement Regulations section 5 are adequate.

### URCA's final decision

Per section 5 of the Procurement Regulations, no later than 60 days following entry into force of these Regulations, licensees shall submit to URCA for approval their respective draft procurement rules which shall be consistent with the Electricity Act, other applicable laws and regulations, relevant license conditions and these Regulations.

## **Procurement Regulations, section 6 – Rules applicable to valuation**

This section lays out the methods used to establish the value of procurement, including scenarios such as fixed and variable term durations.

*Question 5: Do you agree with the proposed rules to establish the value of procurement?*

### BPL's comments

BPL agrees in general with the rules. It stated however that due to the range of goods and services obtained not all elements of the rules would be applicable.

### URCA's response to comments received

URCA agrees with the BPL's statement that not all provisions of the subject section 6 will apply in all cases; the purpose of the section is to ensure that where purchases could be divided into lots it will not be done in such a way that the competitive element is lost.

### URCA's final decision

No action required.

## **Procurement Regulations, section 7 – Preparation of procurement – relationship to the Integrated Resource Plan**

Licenseses that are required to produce and/or comply with an Integrated Resource Plan (“IRP”) as part of their license conditions will be obligated to follow the rules set out in this section of the regulations. In short, procurement of items related to an IRP must demonstrate compliance with the IRP or justify deviations, which are, subject to approval.

*Question 6: Do you agree with the inter-relationship of the draft regulations and the IRP?*

### BPL’s comments

BPL is of the view that an IRP is a document that should be updated regularly due to changing conditions. Therefore, to tie procurements to an IRP can be overly restrictive for a Licensee. BPL believes that there has to be flexibility in procurements due to prevailing condition.

### URCA’s response to comments received

URCA recognizes that circumstances related to a licensee’s integrated resource plan can vary from complete absence of IRP to having an IRP of different levels of completeness or actualization. Hence, the Procurement Regulations attempt to accommodate all such circumstances and thus to address the flexibility issue raised by BPL.

### URCA’s final decision

No action required.

## **Procurement Regulations, section 8 – Principles of procurement**

Section 8 of the regulations set out the requirement for procurement to be fair, transparent, and competitive.

*Question 7: Do you think section 8 of the draft regulations adequately covers the fundamental principles applied in best procurement practice?*

### BPL’s comments

BPL agrees that section 8 covers the fundamental principles applied in best procurement practice.

### URCA’s response to comments received

URCA notes BPL’s agreement.

### URCA's final decision

No action required.

### **Procurement Regulations, section 9 – Choice of procurement procedures**

The procurement regulations are not intended to be overly restrictive. Licensees may utilize a variety of procurement procedures, as long as they comply with the options set out in the regulations. Various scenarios are accounted for, including the option for single-source procurement to facilitate a rapid response to a catastrophic failure. The choice of options listed in the procurement regulations reflect the principle of competition.

*Question 8: Do you agree with the choice of procurement procedures?*

### BPL's comments

BPL agrees with the choice of procurement procedures. However, BPL recommended the removal of the reference "waste to energy facility" as it considered the wording superfluous.

### URCA's response to comments received

URCA is in agreement with BPL's suggestion to remove the reference to "waste to energy facility" in the Procurement Regulations section 9(4)(g). URCA has replaced the words with the words "renewable electricity resources" which is defined in the Electricity Act 2015, section 2, and notes that section 9(4)(g) is targeting those situations where (i) there is no competition possible, such as purchases of electricity under sections 27 and 28 of the Electricity Act 2015 or (ii) competition is run by a different entity and where electricity is only a by-product (therefore initial express reference to waste to energy facilities).

### URCA's final decision

The wording in section 9(4)(g) of the Procurement Regulations is amended to read as follows:

"acquisition of power from renewable electricity resources where the licensee is obliged to take such power from a specified source in order to meet a particular objective stated by law, a policy or a specific decision of the Government.;"

### **Procurement Regulations, section 10 – Periodic indicative notices**

To foster responses to procurements, Licensees may give public notice of their planned procurement activities.

*Question 9: Do you have an objection to the periodic indicative notices?*



### BPL's comments

BPL does not agree with the use of periodic indicative notices. It considers such notices may lead to licensees being "harassed" by vendors seeking custom.

### URCA's response to comments received

URCA notes BPL's objection and concern related to Periodic Indicative notices. URCA is of the opinion that the provision of such notices should improve the number and quality of responses to bids. Such notices would give more time for potential bidders to gather information and plan for participation in the procurement process if/when it does occur. However, in light of the concern raised, URCA has amended the Procurement Regulations to make this optional.

### URCA's final decision

The wording in section 10(1) of the Procurement Regulations is amended to read as follows:

"Licensee may make known their intentions of planned procurements through the publication of periodic indicative notices in respect of the next budget year."

### **Procurement Regulations, section 11 – Permanent qualification system**

Licensees may establish a permanent qualification system (PQS) approved by URCA. The intention of the PQS is for the licensee to maintain a list of qualified economic operators that can participate in procurement. This is intended to enhance the efficiency and timeliness of procurement.

*Question 10: Do you agree with the establishment of a PQS?*

### BPL's comments

BPL considers that a list of PQS that are exclusively used can potentially compromise an open and transparent procurement process by blocking out other suppliers.

### URCA's response to comments received

URCA notes BPL's comment and refers BPL to the Procurement Regulations; section 9(2) which details the choice of procurement procedures; and section 16 which details the use of restrictive bidding using economic operators in the licensee's Permanent Qualification System. Per section 9(2) the licensee may use Open Bidding in all cases.

### URCA's final decision

No action required.

## **Procurement Regulations, section 12 – Prequalification**

The intention of the procurement regulations is that only qualified economic operators shall participate in bidding. Accordingly, section 12 of the Regulations lays out the requirements for prequalification.

*Question 11: Do you agree with the requirements and criteria for prequalification?*

### BPL's comments

BPL considers that the use of a prequalification process is useful in some but not all procurement cases. Therefore, it should be used when advantageous to do so.

### URCA's response to comments received

URCA notes BPL's comment and invites BPL to consider that the Procurement Regulations apply to procurement items of considerable value (not less than BSD 500,000) at which level the licensee is likely to have an interest in the quality of participants; also note that the Procurement Regulations leave the specifics of prequalification requirements entirely in the purview of the licensees.

### URCA's final decision

No action required.

## **Procurement Regulations, section 13 – Bidding documents**

Section 13 of the draft regulations outlines how qualified economic operators shall be invited to bid; what must be contained in the bid documents, including evaluation criteria; and, the treatment of alternative bids, if allowed.

*Question 12: Do you agree with the proposed content of bid documents and the bidding process?*

### BPL's comments

In general, BPL agrees with the bid documents and process. However, the process as described has some specifics that imply a manual process and as such are too restrictive. Additionally, BPL considers that the section involves URCA in the process in a fashion that may be disruptive and/or cause delays.

BPL does not agree that newspaper notices should be required to be published. BPL is of the view that notices in the newspaper advising persons to check BPL procurement portal for information regarding auctions, bids and tenders should be sufficient.



BPL considers that, in section 13 (5) (d) of the draft Procurement Regulations, the requirement that the bidding document contain information as to the time and place of bid opening would not be applicable in an electronic process, which is what BPL has implemented. BPL suggests revision of this requirement so as to accord with Licensees who do not rely on manual systems.

BPL does not agree to the inclusion of levelized electricity cost of electricity (LCOE) in the bidding documents in section 13(5)(g) of the draft Procurement Regulations. BPL is of the view that it may seek to obtain the best possible LCOE and therefore may not wish to specify a required LCOE but rather a ceiling on those costs. BPL considers that this requirement may not at all times be in the best interest of the Licensee.

BPL considers that the 30-day review in section 13(14) of the draft Procurement Regulations is too long and could result in significant delay. Further, BPL is of the view that URCA's approval in this regard should only be required for material changes. Non-material changes that result from clarification questions raised, or errors necessitating correction and other non-material changes should not be subject to URCA's approval.

BPL is of the view that given that an IRP requires a significant amount of time to develop or modify the requirement in section 13(15)(a) of the draft Procurement Regulations for a Licensee's to revise its IRP will likely present timing challenges for Licensees.

#### URCA's response to comments received

URCA notes BPL's comment. However, the Procurement Regulations do not prescribe a manual process. URCA welcomes BPL's intention to organize internal training to ensure smooth implementation of the Procurement Regulations.

URCA believes BPL has misunderstood the draft Procurement Regulations section 13(5)(g). URCA clarifies that the intent of the clause is, per the wording at the start of section 13(5)(g), for the bidding document to contain "criteria for evaluation and ranking of bids in relation to financial and technical aspects"; examples then follow. The intent, as it relates to BPL's concern, is not necessarily for the licensee to prescribe the levelized cost of the energy criteria for the bidder to meet, although URCA considers in certain circumstances this can be useful, but rather for the bidding documents to clearly lay out, before the bids are submitted, the method that will be used to evaluate the bids received. For example, a higher weighting in the evaluation may be given to the bidder with the lowest evaluated levelized cost of energy.

URCA agrees with the implication of BPL's comment concerning the draft Procurement Regulations section 13(14) that a 30-day response time by URCA could unduly delay the process and may have a detrimental effect. Accordingly, URCA has amended the wording from 30 days to 5 days.

URCA notes BPL's comment with respect to the draft Procurement Regulations section 13(15)(a). URCA agrees with BPL that a licensee's Integrated Resource Plan (IRP) is a significant guiding document for the organization which requires significant research and evaluation to establish.



This is one of the reasons why any changes to the IRP should be justified. The draft Procurement Regulations anticipated and were written to accommodate matters of urgency.

#### URCA's final decision

The wording in section 13(14) of the Procurement Regulations is amended to read as follows:

“URCA shall review such notice and inform the licensee whether it approves the proposed change within 5 (five) days of the date of receipt of such notice. URCA shall be entitled to withhold its approval if such change is likely to unduly affect effective competition between the same bidders by excluding originally qualifying bidders.”

#### **Procurement Regulations, section 14 – Participation of a bidder in preparation of a procurement process**

Section 14 of the Regulations prescribes the precautions required to facilitate participation of a bidder who was involved, in some form, in the preparation stage of the procurement process.

*Question 13: Do you agree with economic operators who were involved in the procurement process being allowed to bid, provided the precautions set out in section 14 of the draft regulations are adhered to?*

#### BPL's comments

BPL considers that section 14 implies that a bidder can be directly involved in the preparation of procurement. It stated its opinion that parties who submit unsolicited proposals can be allowed to bid provided they are also required to make a new submission under the bid conditions with all other bidders.

#### URCA's response to comments received

URCA notes BPL's comment and would like to point out that the subject section handles a situation which is not equivalent to unsolicited bids. URCA believes the Procurement Regulations section 14(3) addresses BPL's concern.

#### URCA's final decision

No action required.

#### **Procurement Regulations, section 15 – Submission of bids**

The procurement regulations stipulate that bids are to be submitted using a “two envelope system.” One envelope would contain the technical proposal and the other the financial proposal. This requirement facilitates the evaluation process discussed in section 19 of the regulations.

*Question 14: Do you agree with the “two envelope system”?*

BPL’s comments

BPL is of the opinion the two-envelope system should not be required in all cases.

URCA’s response to comments received

Having a two envelope system, indeed, is not required in all cases, but, in support of the necessity to have it in this case are the following arguments: (i) the Procurement Regulations apply to purchases of at least BSD 500,000 where stricter rules are more justified than in minor purchases and (ii) although not the universal standard, the two envelope system by far prevails in international practice.

URCA’s final decision

No action required.

**Procurement Regulations, section 16 – Restricted bidding**

Restricted bidding is included in the Regulations to accommodate unique situations where there is a limited number of suppliers and / or urgency dictates it. It is not intended to be a common form of procurement.

*Question 15: Do you agree with the conditions under which restricted bidding may be utilized?*

BPL’s comments

BPL does not agree with URCA’s involvement in the restricted bidding process as it believes that, if URCA has to approve the list of restricted bidders, this seems to insert URCA into the Licensee’s operations.

URCA’s response to comments received

URCA notes BPL’s comment with respect to URCA’s involvement as outlined in the draft Procurement Regulations section 16. URCA is sympathetic to BPL’s concern. URCA’s involvement in the process does not relieve a licensee from the obligations outlined in section 8. Hence, URCA has amended the draft Procurement Regulations section 16(2) and removed section 16(3).

URCA’s final decision

section 16(3) is deleted and the wording in section 16(2) of the Procurement Regulations is amended to read as follows:

“Where a licensee elects to conduct a restricted bidding in respect of a procurement item specified in subsections (b) and (c) above, the licensee shall, in addition to the general requirements of these Regulations in respect of preparation of the procurement process and of

the bidding documents, submit to URCA its proposed list of the economic operators to be invited to participate in the restricted bidding.”

### **Procurement Regulations, sections 17 & 18 – Reception of bids & Opening of bids**

Sections 17 and 18 of the Regulations detail how bids shall be received and opened by the licensee.

*Question 16: Do you agree with the requirements for the receipt and opening of bids?*

#### BPL’s comments

BPL considers that the process set out in the draft Procurement Regulations is a manual one. BPL stated it is moving to an electronic process and as such the section should be modified to allow for that approach.

#### URCA’s response to comments received

URCA agrees with BPL’s comment that the draft Procurement Regulations section 17(1) can be implied as requiring a manual process. This is not the intent of the Procurement Regulations. URCA has amended the Procurement Regulations to address this.

#### URCA’s final decision

Sections 17 and 18 of the Procurement Regulations are redrafted to better reflect the inclusion of an electronic procurement process.

### **Procurement Regulations, section 19 – Evaluation of bids**

In order to qualify for financial evaluation, bids must first be vetted to determine whether they meet the technical requirements set out in the bid documents. Bids that do not meet the technical requirements shall be disqualified. The financial evaluation is based on the expected life cycle cost of the procured item, rather than the first cost. The draft regulations also address how alternative bids are to be handled, bid clarifications and the situation where only one or no bids meet the requirements.

*Question 17: Do you agree with the requirements for the evaluation of bids?*

#### BPL’s comments

BPL is of the view that all unsuccessful bidders can be informed electronically via the bid portal. BPL does not see the need for specific notification to bidders not meeting the technical requirements.



BPL disagrees with what is being proposed in section 19 (7) of the draft Procurement Regulations. BPL is of the view that Licensees should be able to reject an unsolicited bid if the terms are not acceptable to BPL.

BPL considers that consistency with the IRP should not be a requirement in section 19(9) provided that the alternative provides equal or better benefits to the Licensee.

BPL considers that the requirement, in section 19 (11) (c), for the Licensee to reject a bid in circumstances where a bidder amends its bid in any manner following the due date for submission of bids should expressly exclude obvious clerical errors, provided that it does not impact the evaluation of the bid to the extent that it improves the evaluation of the bid.

BPL is of the view that the requirement in section 19 (15) implies that the second-best bidder must be offered a contract. However, it is BPL's position that the Licensee must have the option to reject all remaining bids and end the process.

BPL notes the associated timeline at section 19 (15) of the draft Procurement Regulations. BPL submits that the 5-day period in which the Licensee must inform URCA that no bids received have met the requirements is too short as it does not provide sufficient time to properly evaluate the bids. BPL considers that it is unclear when the 5-day period commences, but is of the view that the period would only be appropriate if it starts from the date of acceptance of the evaluation report, and in circumstances where the period relates solely to notification.

BPL agrees with the requirement contained in section 19 (17) of the draft Procurement Regulations but submits that going forward, the intent would be that the bidding documents be stored in electronic format on the procurement portal.

#### URCA's response to comments received

URCA notes BPL's comment with respect to the draft Procurement Regulations section 19(7) and refers BPL to section 19(8) which facilitates the rejection of an unsolicited bid.

URCA notes BPL's comment with respect to section 19(9) and refers BPL to URCA's response above in section 13(5)(a).

URCA appreciates BPL's comment with respect to section 19(11)(c) but is of the view that the bidders should be expected to be experienced business entities capable of making consistent and legally binding proposals and should thus not be encouraged to submit amendments to their bids whether or not they are considered "material". Qualification of "material" itself is prone to disputes between the licensee and the bidder, allowing such amendments is likely to meet challenges of other bidders; finally, handling of additional/amended bids means additional administrative burden on the licensee. In practice, obvious/clerical errors are normally handled via clarifications between the entity conducting the competition and the bidder.

URCA agrees with the principle of BPL's comment with respect to section 19(15); a licensee shall have the right to reject all bids and end the bidding process. URCA has amended clause 19(15) to address this concern.

URCA notes BPL's comment with respect to section 19(17) and has no objection.

#### URCA's final decision

Sections 19(15)(c) Procurement Regulations is added to afford a Licensee the right to reasonably reject all bids.

#### **Procurement Regulations, section 20 – Notice of contract award**

Licensees are required to inform relevant persons that a contract has been awarded. The notice must include pertinent information.

*Question 18: Do you agree with the requirement to publish a notice of contract award and the contents to be included in the notice?*

#### BPL's comments

BPL expressed the view that notices should be published on its website only. It also objected to publishing the contract price.

#### URCA's response to comments received

URCA agrees in principle with BPL's comment with respect to the draft Procurement Regulations section 20(1)(a) that licensees should have an option of publishing notices electronically or physically. URCA has amended the draft Procurement Regulations to reflect this.

URCA notes BPL's comment with respect to section 20(2)(d). URCA believes that not publishing the contract price or another value reflecting the licensee's cost of procurement of the subject item is not justified and will not be conducive to creating a competitive environment.

#### URCA's final decision

Sections 20(1)(a) Procurement Regulations is redrafted to read as follows:

"In respect of open bidding - publish the notice of contract award within one month of its relevant decision, in the same way as the initial invitation to bid was published."

Section 20(2)(d) has been redrafted as follows.

"the total contract price (if it is known), or another appropriate value reflecting the cost of acquisition which was used by the licensee in the determination of the winning bid."



## **Procurement Regulations, section 21 – Treatment of unsolicited bids**

Section 21 of the Regulations addresses the treatment of unsolicited bids. A licensee is not obliged to consider an unsolicited bid; however, if they chose to do so, they must obtain non-objection from URCA before proceeding. Unless adequate justification is provided otherwise, the procurement may still be subject to competitive procurement procedures.

*Question 19: Do you agree with the treatment of unsolicited bids?*

### BPL's comments

BPL stated that unsolicited submissions should not be considered part of an official bid response.

BPL stated that the evaluation of a bid per section 21(5) of the draft Procurement Regulations should be based on the life cycle cost.

### URCA's response to comments received

URCA notes BPL's comment. URCA is of the opinion that BPL's concern is addressed in the Procurement Regulations section 21(1) which states licensees shall not be obliged to consider unsolicited bids.

URCA notes BPL's comment with respect to section 21(5) and refers BPL to section 13(5)(g).

### URCA's final decision

No action required.

## **Procurement Regulations, section 22 – Licensee procurement reporting**

Section 22 of the Regulations sets out the requirements for reporting on procurement by licensees to URCA.

*Question 20: Do you agree with the licensee procurement reporting requirements?*

### BPL's comments

BPL considers that URCA's requirement at section 22 (2) to provide a report on procurement in respect to procurement undertaken the preceding year to be onerous. However, BPL suggested that the period within which the said report is required be extended to three (3) months rather than two (2) months. BPL considers the suggested extension is especially required after the entry into force of the regulations as Licensees will simultaneously be required to focus on implementation.



### URCA's response to comments received

URCA notes BPL's comment with respect to the draft Procurement Regulations section 22(2) concerning the requirement of the licensee to submit its procurement report to URCA "within two months after the end of the preceding financial year" and BPL's statement that it finds this requirement onerous. URCA does not agree with BPL's statement. URCA is of the opinion that submission of the report should not be onerous if it is prepared on a rolling basis as opposed to the end of the year.

URCA notes BPL's comment with respect to section 22(2). URCA has amended the draft Procurement Regulations section 22(2) from "within two months from the entry into force of these Regulations" to "within six months from the entry into force of these Regulations."

### URCA's final decision

Sections 22(2)(a) Procurement Regulations is redrafted to read as follows:

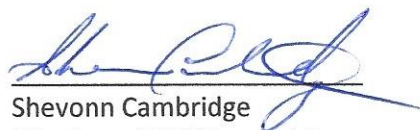
"Licensees shall, not later than two months after the end of the preceding fiscal year, and, within 6 (six) months of the entry into force of these Regulations, submit to URCA a report on procurement in respect of the items specified subsections (3) and (4) below undertaken in the preceding fiscal year."

#### **4 Next Steps**

URCA thanks BPL for its involvement in the consultation process. The comments received were valuable to this Statement of Results and Final Decision on the issues presented.

Concurrently with the publication of the Statement of Results and Final Decision, URCA also publishes its "**Procurement Regulations for Electricity Sector Licensees, 2020**" (ES 07/2020). The regulations establish the framework for procurement by licensees of generation resources, transmission, distribution, storage and supply assets and services to ensure that licensees are at all times compliant with their economic purchasing obligations under their respective licenses.

The "**Procurement Regulations for Electricity Sector Licensees, 2020**" (ES 07/2020) become effective on the date of publication on URCA's website ([www.urbahamas.bs](http://www.urbahamas.bs)). Failure to comply with the regulations may subject "specified licensees" to the enforcement provisions in the Electricity Act, any other relevant law, and regulatory or other measures.



Shevonn Cambridge  
Director of Utilities and Energy