

## ILLINOIS POWER AGENCY

## NOTICE OF PROPOSED AMENDMENTS

- 1) Heading of the Part: Fee Assessment and Collection for Regular Procurement Events, Special Procurement Events and Other Services
- 2) Code Citation: 83 Ill. Adm. Code 1200
- 3) 

<u>Section Numbers:</u>	<u>Proposed Actions:</u>
1200.100	Amendment
1200.110	Amendment
1200.200	Amendment
1200.210	Amendment
1200.220	Amendment
1200.230	Amendment
1200.320	Amendment
- 4) Statutory Authority: Implementing and authorized by Sections 1-20(b)(23), 1-55, 1-58(d), 1-75(g) and (h), 1-77(d) and 1-78(i) of the Illinois Power Agency Act [20 ILCS 3855], and Section 9-220(h) and (h-1) of the Public Utilities Act [220 ILCS 5].
- 5) A Complete Description of the Subjections and Issues Involved: To comply with Section 1-55 of the Illinois Power Agency Act [20 ILCS 3855/1-55], the Illinois Power Agency ("Agency") previously adopted "rules regarding charges and fees it is expressly authorized to collect in order to fund the operations of the Agency". The amendments to Part 1200 of Title 83 proposed by the Agency are intended to address changes in law since the original adoption of the rules in 2014. The proposed amendments reflect changes in the Agency's procurement plans and programs and clarify how and when expenses are recovered from bidders, suppliers, and participating electric utilities to reimburse the Agency for procurement planning and program administration.
- 6) Published studies or reports, and sources of underlying data, used to compose this rulemaking: None
- 7) Will this rulemaking replace an emergency rule currently in effect? No
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this rulemaking contain incorporations by reference? No
- 10) Are there any other rulemakings pending on this Part? No

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- 11) Statement of Statewide Policy Objectives: This rulemaking does not create or expand a State mandate.
- 12) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: Any interested parties may submit comments concerning this proposed rulemaking within 45 days after the date of this issue of the *Illinois Register*. All comments must be in writing and should be addressed to:

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- 13) Initial Regulatory Flexibility Analysis:
  - A) Types of small businesses, small municipalities and not for profit corporations affected: The proposed amendments should have no impact on small businesses, small municipalities, or not-for-profit corporations.
  - B) Reporting, bookkeeping or other procedures required for compliance: The proposed amendments merely clarify internal procedures, so they should not require new reporting, bookkeeping, or other procedures for compliance.
  - C) Types of professional skills necessary for compliance: No professional skills are anticipated to be required.
- 14) Small Business Impact Analysis: None
- 15) Regulatory Agenda on which this rulemaking was summarized: This rulemaking was not included on either of the 2 most recent agendas because it was not anticipated within that time period.

The full text of the Proposed Amendments begins on the next page:

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TITLE 83: PUBLIC UTILITIES  
CHAPTER III: ILLINOIS POWER AGENCY  
SUBCHAPTER A: CONTRACTS AND FEES

## PART 1200

FEE ASSESSMENT AND COLLECTION FOR REGULAR PROCUREMENT EVENTS,  
SPECIAL PROCUREMENT EVENTS AND OTHER SERVICES

## SUBPART A: INTRODUCTION

## Section:

1200.100	Scope
1200.110	Definitions
1200.120	Publication of Overhead
1200.130	Publication of Mediation Rates
1200.140	Statement of Policy

## SUBPART B: REGULAR PROCUREMENTS

## Section

1200.200	Scope
1200.210	<del>Planning Cycle</del> Fees Assessed to Participating Utilities
1200.220	Bidder and Supplier Fees
1200.230	Timing for Invoices to and Payment by Utilities
1200.240	Communications Regarding Fees and Fee Dispute Resolution

## SUBPART C: SPECIAL PROCUREMENTS

## Section

1200.300	Scope
1200.310	Fees Assessment and Payment Schedules for Participating Utilities in Special Procurements
1200.320	Bidder and Supplier Fees
1200.330	Timing for Invoices to and Payment by Utilities

## SUBPART D: CONTRACT REVIEW, EVALUATION AND MEDIATION

## Section

1200.400	Scope
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1200.410 Facility Cost Report or Development Plan Evaluation  
1200.420 Mediation

AUTHORITY: Implementing and authorized by Sections 1-20(b)(23), 1-55, 1-58(d), 1-75(g) and (h), 1-77(d) and 1-78(i) of the Illinois Power Agency Act [20 ILCS 3855], and Section 9-220(h) and (h-1) of the Public Utilities Act [220 ILCS 5].

SOURCE: Adopted at 38 Ill. Reg. 9885, effective April 28, 2014; amended at 49 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

## SUBPART A: INTRODUCTION

**Section 1200.100 Scope**

This Part covers fee assessment by the Agency for development of Procurement Plans, conducting regular procurement events, conducting special procurement events, program administration, contract review, evaluation, ~~and~~ mediation, ~~and other tasks as~~ required or authorized under the Illinois Power Agency Act ~~or~~ and the Public Utilities Act.

(Source: Amended at 49 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 1200.110 Definitions**

The following terms are defined for this Part:

"Act" shall mean the Illinois Power Agency Act [20 ILCS 3855].

"Agency" shall mean the Illinois Power Agency.

"ARES" shall mean an Alternative Retail Electric Supplier, as defined in Section 16-102 of the Public Utilities Act.

~~"Attributable Portion" shall mean the share of a fixed expense assigned to a participating utility.~~

"Bidder" shall mean any person or entity that bids to provide electric supply or related energy products (e.g., renewable energy credits, energy efficiency credits, or demand response) or feedstock for any facility using clean coal technology in any amount in any procurement.

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"Commission" shall mean the Illinois Commerce Commission.

"Mediation" shall have the meaning provided in the specific Section of the Act or the Public Utilities Act authorizing or requiring the Agency to offer mediation in a particular instance. (See 220 ILCS 5/9-220(h))

"Overhead" shall mean an amount determined on an annual basis by taking the Agency's appropriated operations budget, and reducing that amount by~~excluding~~ budgeted amounts for procurements conducted under Subparts B, C,~~one~~ or D, program administration,~~more~~ procurement administrators, as defined in Section 16-111.5(c) of the Public Utilities Act, any expert or expert consulting firm as defined in Sections 1-75(a)(1) and 1-77(a)(1) of the Act or any other individual or firm the Agency is required to retain pursuant to the Act or the Public Utilities Act.

"Participating Utility" shall mean any utility for which the Agency conducts energy or capacity procurement planning, a regular procurement, or a special procurement; or any utility which enters into contractual obligations through a program or procurement administered by the Agency.

~~"Planning Cycle" shall mean the time period starting no later than January 1 of a year and ending with the Commission issuing a Final Order in a proceeding pursuant to Section 1-78 of the Act or Section 16-111.5 or 16-111.5B of the Public Utilities Act, but in any event no later than December 31 of the same year, unless the Commission grants rehearing or a party appeals the Commission's Final Order.~~

"Procurement" shall mean any competitive bidding process overseen by the Agency or its agents, representatives, or consultants. Procurement events are limited to bidding for electric supply or related energy products (such as renewable energy credits, energy efficiency credits, or demand response) and feedstock for any facility using clean coal technology.

"Procurement Administrator" shall have the meaning provided in Section 1-~~75~~78 of the Act.

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~~"Procurement Cycle" shall mean the time from the end of the planning cycle to the execution of the final supply contract or sourcing agreement authorized in a procurement approved in the planning cycle.~~

"Procurement Event" shall mean the actual procurement of a product or products for one or more participating utilities and, as applicable, an ARES, or a State fund, regardless of whether the event results in any product being procured.

"Procurement Plan" shall have the meaning provided in Section 1-75(a) of the Act. This includes the annual electricity procurement plan, the biannual long-term renewable resources procurement plan, the zero emissions standard procurement plan, the carbon mitigation credit procurement plan, and any other plan authorized by the General Assembly.

"Product" shall mean:

energy, capacity, ancillary services, other measures of electricity supplied, energy efficiency, demand response, or reductions in demand for electricity (through commercially verifiable methods such as verified voluntary load reduction) that can be measured in a ~~single~~singly unit specified by the Agency in the procurement document, ~~and~~ renewable energy credits, zero emission credits, carbon mitigation credits, and other products specified in procurement plans authorized by the General Assembly.

"Program" shall mean any program administered by the Agency under the provisions of the Act, including, but not limited to, the Illinois Solar for All Program established in Section 1-56(b)(2) of the Act and the Adjustable Block Program established in Section 1-75(c)(1)(K) of the Act.

"Program Administration" shall mean the activities of consultants retained by the Agency to administer any aspect of a program authorized under Sections 1-56 or 1-75 of the Act, including program administrators, the procurement administrator, the procurement planning consultant, the Illinois Solar for All evaluator, and other consultants authorized by the General Assembly.

"Public Utilities Act" shall mean 220 ILCS 5.

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"Regular Procurement" shall mean any procurement authorized by a procurement plan duly approved by the Commission.

"Sourcing Agreement" shall mean a contract between a clean coal SNG facility, a clean coal SNG brownfield facility, an initial clean coal facility, a clean coal facility, or any other similar bilateral contract between a facility and a public utility or ARES described in the Public Utilities Act or the Act.

"Special Procurement" shall mean any procurement that is not a regular procurement contained in a procurement plan approved by the Commission, and that becomes mandated for a particular Procurement Cycle after its associated procurement Planning Cycle has ended.

"Supplier" shall mean any bidder who successfully secures the right to provide one or more units of one or more products in a procurement event.

(Source: Amended at 49 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## SUBPART B: REGULAR PROCUREMENTS

**Section 1200.200 Scope**

Each Section of this Subpart B shall be applicable only to costs incurred pursuant to Sections 1-56, 1-75, and 1-77 of the Act and Section 16-111.5 of the Public Utilities Act.

(Source: Amended at 49 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 1200.210 ~~Planning Cycle~~ Fees Assessed to Participating Utilities**

- a) *The Agency shall assess fees to each affected utility to recover the costs incurred in preparation of procurement plans for the utility, for program administration, and for other initiatives conducted by the Agency as required or authorized by the Illinois Power Agency Act or the Public Utilities Act. (See 20 ILCS 3855/1-20(b)24); 20 ILCS 3855/1-75(g); ~~the annual procurement plan for the utility.~~ [20 ILCS 3855/1-75(g); 20 ILCS 3855/1-77(d)]* These fees shall cover costs for the Agency and its agents, representatives and consultants.
- b) The costs incurred by the Agency and its agents, representatives and consultants shall consist of the following:

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- 1) Actual contract costs invoiced by the procurement planning consultant in furtherance of work required under or related to requirements of Section 1-75 of the Act (See 20 ILCS 3855/1-75(g)).
  - 2) Actual program administration costs invoiced by one or more consultants in furtherance of work required under or related to requirements of Section 1-56 or 1-75 of the Act (See 20 ILCS 3855/1-55; 20 ILCS 3855/1-77(d)).
  - 3) Actual costs invoiced by one or more consultants in furtherance of work mandated by the General Assembly to be conducted by the Agency. (See 20 ILCS 3855/1-20(b)(24)).
  - 42) ~~The 67% of the~~ overhead budgeted by the Agency for the fiscal year, reduced by 90% of the investment income~~amount of overhead collected through fees otherwise authorized in Subparts B, C and D pursuant to Section 1200.140 already collected at the time of billing during the same fiscal year, and further reduced by 67% of the interest~~ generated by the Agency's Trust Fund in the prior fiscal year to fund the Agency's Operating Fund.
- c) Allocation
- 1) The Agency shall assign and allocate its costs incurred pursuant to ~~subsections~~subsection (b)(1) ~~and (b)(2)~~ to reflect costs incurred in support of each of the participating utilities. To the extent that the procurement planning consultant incurs costs in support of more than one participating utility, for the development of procurement plans that only procure resources for potentially eligible load (see 20 ILCS 3855/1-75(a)), the Agency shall allocate costs based on the total amount of energy associated with each participating utility's total potentially eligible load in the first delivery year of the procurement as forecast in the participating utility's load forecast submitted in accordance with Section 16-111.5(d) of the Public Utilities Act (see 220 ILCS 5/16-111.5(d)(1)). ~~For the development procurement plans for all retail load (see 220 ILCS 5/16-102), the Agency shall allocate costs based on each participating utility's retail load in the first delivery year of the procurement as forecast in any applicable load forecast provided by the utilities. In the case where no load~~



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forecast is available, the Agency shall use the allocation used for the most recent electricity procurement plan.

- 2) The Agency shall allocate costs recoverable under ~~subsections~~ subsection (b)(32) and (b)(4) between the participating utilities in the same manner as the costs allocated pursuant to subsection (c)(1).
- d) Notwithstanding any other subsection of this Section, in a year in which the Agency's appropriation and transfer of funds from the Illinois Power Agency Trust Fund pursuant to Section 6z-75 of the State Finance Act ~~f(see 30 ILCS 105/6z-75)~~ †(see 30 ILCS 105/6z-75) does not cover ~~the 33% of the Agency's overhead and no procurement occurs,~~ then the Agency may recover ~~100% of~~ its overhead pursuant to subsection (b)(2) of this Section (see 20 ILCS 3855/1-20(b)(24)).

(Source: Amended at 49 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 1200.220 Bidder And Supplier Fees**

- a) The Agency shall recover the following costs from bidders and suppliers in all regular procurement events during a fiscal year (see 20 ILCS 3855/175(h)):
  - 1) Actual costs incurred by the procurement administrator for the procurement event in which the bidder or supplier participates (see 20 ILCS 3855/1-75(h)).
  - 2) The Agency's overhead to the extent not recovered pursuant to Section 1200.210 and Subpart D.
  - 3) If a procurement event was authorized by a procurement plan in a previous fiscal year, the Agency may collect fees from suppliers authorized in subsection (c) for the fiscal year in which the procurement event occurs.
  - 4) The balance of costs for prior procurement events for like products where a procurement event fails to procure the targeted quantities and thus the bidder and supplier fees do not cover the cost of that procurement event.
- b) Each bidder shall be assessed a bid participation fee. This fee shall be \$500, or as set by the Agency after consultation with the procurement administrator. If the fee

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is other than \$500, the Agency shall provide notice of the fee as part of bid solicitation documents.

- c) The Agency shall, in consultation with the procurement administrator, approve a supplier fee sufficient to recover the following costs:
  - 1) For each procurement event, the allocated costs of the procurement administrators based on principles of cost causation less the value of bid participation fees collected pursuant to subsection (b).
  - 2) The Agency, in consultation with the procurement administrator, shall allocate the procurement administrator's costs and overhead costs among products in a manner to ensure a likelihood of cost recovery and a reasonable fee in relation to the unit price of the product being procured.
  - 3) For each procurement event, each supplier shall pay a fee equal to the value in costs allocated to a particular product pursuant to subsection (c)(2), multiplied by the units of product successfully bid by the bidder in a procurement event, divided by the total number of units successfully bid by all bidders in the same procurement event.
  - 4) The value in subsection (c)(3) shall be expressed in terms of dollars per unit successfully bid.
- d) Notwithstanding any other provision of this Part, all fees assessed under this Section shall be due no later than 30 days after the date of the invoice from the Agency, or as specified in the supplier fee agreement.
- e) If the Agency conducts a procurement using the Renewable Energy Resources Fund as described in Section 1-56 of the Act, the Agency may recover the costs of the procurement from the Renewable Energy Resources Fund instead of from bidder and supplier fees, to the extent authorized by law ([see 20 ILCS 3855/1-56\(i\)\(9\)](#)).

(Source: Amended at 49 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 1200.230 Timing for Invoices to and Payment by Utilities**

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- a) No later than ~~the last day February 15~~ of ~~each month any year~~, the Agency shall issue an invoice to each participating utility summarizing the total expenses paid by the Agency ~~fee assessment~~ pursuant to Section 1200.210 in that month, or the previous ~~months planning cycle~~. Nothing in this subsection prevents the Agency from providing additional invoices during the fiscal year, or prevents a participating utility from inquiring as to actual or estimated fee assessments incurred pursuant to this Part at any time.
- b) No later than September 30 of each year, the Agency shall issue an invoice to each participating utility for up to 50% of the budgeted overhead for the fiscal year. No later than the last day of the month after the Agency has determined the amount of funds that can be transferred from the Illinois Power Agency Trust Fund, the Agency shall issue an invoice to each participating utility for the balance of the overhead reduced by the amount that will be transferred from the Illinois Power Agency Trust Fund (see 20 ILCS 3855/1-55). ~~Periodic invoices issued by the Agency pursuant to subsection (a) must be paid no later than the due date on the invoices.~~
- c) No later than the last day of each month ~~March 15 of any year~~, each participating utility shall pay the full undisputed amount of all invoices issued pursuant to subsections (a) and (b) in prior months. ~~subsection (a). For any invoices issued after February 15 of the fiscal year, each participating utility shall pay the full undisputed amount of each invoice within 30 days after receipt of the invoice.~~
- d) To the extent that a participating utility disputes the amount of one or more invoices, the participating utility shall pay the undisputed amount, and all disputed amounts shall be subject to Section 1200.240.

(Source: Amended at 49 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## SUBPART C: SPECIAL PROCUREMENTS

**Section 1200.320 Bidder and Supplier Fees**

- a) The Agency shall recover the following costs from bidders and suppliers in a special procurement event to the extent the fees are recoverable from suppliers under the Act or the Public Utilities Act (see 20 ILCS 3855/1-75(g) through (h)):
- 1) Actual costs of the procurement administrator.

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- 2) All other costs incurred by the Agency in support of the Special procurement event.
- b) Each bidder may be assessed a bid participation fee. The fee shall be \$500, or as set by the Agency after consultation with the procurement administrator. If the fee is other than \$500, the Agency shall provide notice of the fee as part of bid solicitation documents.
- c) Each supplier, defined as a bidder that is awarded at least one unit in any procurement, shall be assessed fees calculated as follows: all costs identified in subsection (a), reduced by all fees collected from bidders pursuant to subsection (b), the product of which is to be multiplied by the number of units successfully bid by the supplier and divided by the total number of units successfully bid.
- d) Notwithstanding any other provision of this Part, all fees assessed under this Section shall be due no later than 30 days after the date of the invoice from the Agency, or as specified in the supplier fee agreements.
- e) In the event that bidder and supplier fees do not cover the cost of conducting a special procurement, the Agency may collect the remaining balance from the participating utilities.

(Source: Amended at 49 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)