Board Decision
Amending Board Policy on Balanced Competition

May 23, 2012

Summary

Amend the board Policy on Balanced Competition to accommodate changes in the process of rebidding program management contracts.

Background

- The Balanced Competition policy provides that no one may be a prime contractor or subcontractor of more than two programs. The purpose of the policy is to ensure competition for Energy Trust program management contracts.
- Energy Trust is re-bidding a number of program management contracts over the coming year, and in doing so is dividing programs into smaller parts.

Discussion

- By dividing programs into smaller parts, Energy Trust hopes to foster more competition for program management, allowing more opportunity for more contractors to team or be subcontractors.
- At the same time, this subdivision of programs could limit competition because contractors who previously had two program management contracts, a single program contract and a subcontract or more than two subcontracts could no longer compete consistent with the Balanced Competition policy.
- Staff sought a way to balance these effects by allowing firms with two program management contracts to also subcontract on other programs, as long as the subcontract represents no more than 33% of the program's energy savings goals.
- We would continue to limit any one firm to no more than two prime contracts for program management. The change is just about allowing for more subcontracting across programs.
- We currently provide services to southwest Washington customers of NW Natural. Although this is a relatively small number of customers, this would be treated as a separate program in the re-bid process. We seek exemption from the Balanced Competition Policy for contracts associated with this program. The NWN-WA efforts amounts to 0.9% of the total Energy Trust budget in 2012
- At the request of the Policy Committee, staff explored the idea of imposing an aggregate limit on the amount of Energy Trust business an entity could contract for. We concluded that the 33% limitation would alleviate concern about a single entity dominating programs across Energy Trust's multiple offerings,. The committee members concurred.

Recommendation

Amend the Balanced Competition policy as shown in the attached.

RESOLUTION 630

AMENDING BOARD POLICY ON BALANCED COMPETITION

WHEREAS:

1. **The Balanced Competition policy provides that no one may be a prime contractor or subcontractor of more than two Energy Trust programs. The purpose of the policy is to ensure competition for Energy Trust program management contracts.**
2. **Energy Trust is re-bidding a number of program management contracts, and in doing so is dividing programs into smaller parts.**
3. **Dividing programs into smaller parts is meant to foster competition for program management contracts. At the same time, subdividing programs could limit competition because contractors who previously had a single program contract or subcontract would now have two, and could no longer compete consistent with the Balanced Competition policy.**
4. **The board sought a way to balance these effects by allowing firms with two or more program management contracts also to subcontract on other programs, as long as the subcontract represents no more than 33% of the program's energy savings.**
5. **Energy Trust also provides services to southwest Washington customers of NW Natural. These services are to be treated as a separate program in the re-bid process. Because this involves a relatively small market, the board intends to exempt this program from the Balanced Competition Policy.**

It is therefore RESOLVED:

1. **The Energy Trust board policy on Balanced Competition is amended as shown in the attachment.**

Moved by: Seconded by:

Vote: In favor: Abstained:

Opposed: [list name(s) and, if requested, reason for "no" vote]

ATTACHMENT: BALANCED COMPETITION POLICY

1. *Arrangements for regulated utility information and referrals.* The Energy Trust will arrange directly with regulated utilities for information and referrals that help the Energy Trust reach the public, and come as a byproduct of the regulated role. The Energy Trust and utilities will work together to determine what activities and information will be made available with or without fee. Examples:

- Coordination of 1-800 response for household and business efficiency inquiries
- Qualification of leads coming from utility/customer relationships and referral to programs
- Access to historic energy usage data as requested by utility customers
- Access to utility-generated consumer demographic information for evaluation and/or marketing purposes
- Utility customer representative role in marketing

Thus, these capabilities will not influence selection of program management contractors.

Rationale

These are services that stem from the natural monopoly role of the utility.
They are unique and real assets, but not appropriate for the competitive bid.

2. *Limitation on number of program management contracts awarded to a single contractor.*
No single firm, including other companies under the same ownership and affiliates, will be a contractor for more than two concurrent program management contracts.

a. A single firm, including other companies under the same ownership and affiliates, with two concurrent program management contracts may also be a subcontractor of other program management contracts if none of the subcontracts is responsible for more than 33% of a program's energy savings goals.
b. This limitation does not extend to or apply to contracts associated with NW Natural programs in Washington State.

3. This limitation does not apply to subcontracts for installation or technical work (studies, commissioning, etc.) that are awarded to multiple contractors as part of implementation of a single program.

Deleted: (prime or subcontractor)

Formatted: Numbered + Level: 1 + Numbering Style: a, b, c, … + Start at: 1 + Alignment: Left + Aligned at: 18 pt + Indent at: 36 pt

Formatted: Indent: Left: 0 pt, Hanging: 13.5 pt

Rationale

Energy Trust needs to maintain a competitive market for program management. If one competitor wins all slots, others will not develop the skills, nor are they likely to bid in the future.

3. *Limitations on participation of regulated personnel in competitions for program management contracts.* With the exception of utility work for

which Energy Trust contracts in connection with supplemental energy efficiency activities pursuant to the 2007 Renewable Energy Act, an individual within a regulated utility cannot perform work under an Energy Trust contract for program management *and* perform work as part of the regulated utility (i.e., functions billed to ratepayers) in Oregon.

Rationale

• Regulated utilities have their own objectives, which in some cases include maintaining and building load. It would be difficult to manage employees who also report to a regulated utility and its objectives as "first boss."
• To have ratepayers pay for part of the cost of an FTE that was used for competitive Energy Trust work would make it difficult for others to compete.

4. *No review of work of related companies.* Neither a program management contractor to the Energy Trust nor organizations under the same ownership or affiliates may perform work under separate contract that would be submitted to the program management contractor for review on behalf of the Energy Trust. This type of work includes recommendation of efficiency measure brands, models or performance, technical analysis of savings, or equipment installation or commissioning.

Rationale

Avoids having program management contractors review their own work.
Reduces consumer confusion about roles.