

State Energy Optimization Plan Administrator

Bidder Questions and Answers

Q.1. What is the requirement for the implementer to be a “qualified nonprofit organization”? There is wording in PA 295, but it is not clear what qualifies an organization as a nonprofit. Also, would a for-profit company be able to subcontract with a nonprofit?

A.1. PA 295, Sec. 91(6) reads as follows:

(6) The commission shall select a qualified nonprofit organization to serve as an energy optimization program administrator under this section, through a competitive bid process.

In light of the energy efficiency goals and aggressive timetables in the Act as well as the word, “experienced” included in Sec. 71(h), the term, “qualified” suggests that the State EO Plan Administrator should be experienced and able to deliver demonstrable energy efficiency results within the required timeframe.

A nonprofit organization is an association or corporation organized for purposes other than generating a profit. None of the excess earnings of a nonprofit organization may be distributed to shareholders, members, directors or officers. Rather, any surplus must be retained by the organization and used to offer the programs or services for which it was founded. Section 501(c) is a provision of the United States Internal Revenue Code (26 U.S.C. § 501(c)), listing 26 types of non-profit organizations exempt from some federal income taxes. Sections 503 through 505 list the requirements for attaining such exemptions. Nonprofit organizations in the United States are generally incorporated under one of the provisions of this code. See IRS Publication 557, Tax-Exempt Status for Your Organization, for application procedures and other related information.

Bidders may wish to demonstrate their status as a nonprofit organization by attaching substantiating documentation from the Internal Revenue Service to their proposals.

Michigan nonprofit corporations may wish to seek advice of counsel regarding the Michigan Nonprofit Corporation Act, MCL 450. 2101 et seq

There is no language in PA 295 that prohibits the nonprofit administrator from contracting with for-profit subcontractors. Bidders are encouraged to seek independent legal counsel concerning the lawful permissible activities of their respective nonprofit corporations.

Q.2. We are interested in providing relevant engineering and/or project management services to support the non-profit organization that is

awarded the “Michigan Energy Optimization Plan Administrator” contract, and are looking for information to that end. Can you please let me know what steps we need to take to get involved as a subcontractor, and if information is available on the organizations that are bidding?

A.2. Firms interested in providing services under the State EO Plan Administrator have two options. Either they partner, or tentatively subcontract with, a prospective primary contractor in the response to this RFP or they wait until the contract has been awarded and contact the State EO Plan Administrator directly to offer their services. The State is not in a position to facilitate the development of relationships between the numerous entities that may wish to play a role in the State EO Plan.

An organization wishing to subcontract with a nonprofit bidder may wish to seek independent legal counsel regarding its eligibility to subcontract with the nonprofit bidder under the statutes applicable in the jurisdiction where the nonprofit bidder is incorporated. The answer may be different depending upon the state in which the nonprofit bidder is incorporated.

Q.3. In Section 1.021.1 there is discussion of a desire for ‘keeping program offerings as similar as possible, especially in overlapping provider service territories.’ (1). Does this mean that program offerings might vary between the utilities that are part of the MPSC Administrator? (2). If programs will vary, how do you anticipate managing that variance? Would each utility have some discretion about the offerings in their service territory? (3). Would you anticipate one set of programs for the Lower Peninsula and a separate set for the Upper Peninsula? (The flow chart in this section suggests that this might be the case.)

A.3. (1). Yes. Program offering may vary between utilities that are part of the State EO Plan. Sec. 71(3) (a) of the Act allows for flexibility in program design based upon the specific characteristics of each utility’s service territory. It would be hoped that variations by service area or region will lead to better program results.

A.3. (2). The successful bidder will be responsible for managing all programs, and variances within programs, in the State EO Plan to achieve the target program results.

A.3.(3). The option of bifurcating the Upper and Lower Peninsulas allows for the possibility of not only somewhat different program designs, if appropriate, but also two different contractors or major subcontractors. Bidders are encouraged to include in their proposals the program design that they believe will yield the best results for all participating providers (utilities).

Q.4. Section 1.022.3 indicates that the Administrator will need to maintain separate accounting and goal tracking for each of the thirteen participating utilities. Again, this raises some questions regarding program design and consistency across the entire set of utilities. If there is one uniform design it is feasible that a particular program offering might run out of funds for some initiatives in some territories while having a surplus of funds for that same program in other service territories. How do you see this issue being handled?

A.4. Act 295, Sec. 91(4) reads as follows:

(4) An alternative compliance payment under subsection (1) shall only be used to fund energy optimization programs for that provider's customers. [Emphasis added.] To the extent feasible, charges collected from a particular customer rate class and paid to the energy optimization program administrator under subsection (1) shall be devoted to energy optimization programs and services for that rate class.

Therefore, no funds may be transferred between programs offered to customers of different providers who are participating in the State EO Plan. To a limited degree, some funds may be transferred between programs offered to customers in different rate classes of the same provider.

Q5. There is discussion in the RFP about seeking stakeholder input into program designs (an approach that we very much embrace) as well as the potential for pilots to test new models (another good idea). At the same time, though, there is much emphasis on consistency. How important is consistency and perhaps even more specifically how important is customer equity across the thirteen participating utilities?

A5. With respect to customer equity, the Act requires that programs be offered for all customer classes and that, to the extent feasible, charges collected from each rate class go to fund programs from that class. The Act also requires the allowance of flexibility in program design based on the characteristics of the providers' service territories. The Act requires that payments by providers who participate in the State Energy Optimization Plan be used to fund programs for that provider's customers. The State EO Plan should also comply with the provisions of Section 71 of the Act. Within the strictures enumerated above, consistency is preferred for the ease of all stakeholders.

Q6. Is the use of a fiscal agent (Implementation Section) up to the discretion of the Administrator? And if not, how will it be determined whether or not to engage a fiscal agent?

A6. Use of a third-party fiscal agent is up to the bidder. If a bidder chooses to use a third-party fiscal agent, it is preferred that the agent be identified and its qualifications described in the response to the RFP. See 1.031.

Q7. Does MPSC anticipate that all incentive checks will be issued under one Michigan program name or would each check also need to reflect the customer's utility?

A7. Assuming that the question is referring to rebate checks that would be issued to customers under certain programs, the Commission Staff anticipates that the checks would be issued under one program name. For tracking purposes, it would seem logical to have the utility's initials or some type of identification code reflected on the checks as well.