

KIUC BOARD POLICY NO. 28
OFFERS TO ACQUIRE THE COOPERATIVE'S ASSETS

PURPOSE OF POLICY:

The Cooperative could receive an offer to acquire all or a substantial portion of its assets, whether by purchase, merger, lease or otherwise. This policy defines the minimum requirements for an offer that the Board will consider, and it establishes funding for the evaluation of such an offer. The Board shall act in the best interests of the Cooperative and its membership and establish the procedures within this policy to govern the Cooperative's receipt, consideration, and final action on an offer to purchase all or a substantial portion of the Cooperative's assets.

POLICY CONTENT:

I. Definitions

An **Inquiry** is an offer to acquire all or a substantial portion of the Cooperative's assets that does not meet the requirements of a Qualifying Offer.

An **Interested Party** is the person, corporation, or other entity submitting the offer to acquire all or a substantial portion of the Cooperative's assets.

A **Qualifying Offer** is an offer to acquire all or a substantial portion of the Cooperative's assets that meets all the requirements set forth in section III. of this policy.

II. Process for Dealing with Offers

The recipient of any Inquiry shall notify the person, corporation, or entity submitting the inquiry that, under the terms of this policy, the Board shall not consider an offer unless it is a Qualifying Offer.

The CEO shall notify the Board of any Inquiry or Qualifying Offer immediately upon notice thereof.

The Board shall consider only Qualifying Offers. If at any time it is determined that an offer is not a Qualifying Offer, it shall be rejected by the Board, and the Interested Party shall be notified of the rejection.

After the Board has determined that it has received a Qualifying Offer, the Board may pursue continued due diligence in entertaining the Qualifying Offer in consultation with the NRECA, consultants, its banks, and counsel, as it may deem fit.

If the offer is withdrawn or rejected, any remaining balance in the escrow account shall be paid to the Interested Party when the Board certifies that all costs set forth in this policy have been paid in full.

III. Requirements of a Qualifying Offer

- A. A Qualifying Offer must be a written offer, containing the acquisition price and all other material terms, which is binding upon the Interested Party until a specified date or until rejected.
- B. A Qualifying Offer must specify the date on which it will expire if not accepted by the Cooperative.
- C. A Qualifying Offer must contain the names, physical and email addresses, and telephone numbers of persons representing the Interested Party with whom the Board may communicate and from whom it may secure authoritative answers regarding the Qualifying Offer.
- D. A Qualifying Offer must contain an agreement by the Interested Party not to issue press releases or discuss the Qualifying Offer with the media without prior written consent from KIUC, and to refrain from issuing misleading statements or advertising.
- E. In light of the expense in responding to a Qualifying Offer, a Qualifying Offer must be accompanied by an escrow agreement acceptable to the Cooperative, which agreement shall require the Interested Party to deposit an amount equal to at least 2% of the Cooperative's Total Utility Plant in an escrow account. The terms of the escrow agreement shall provide that the principal amount of the deposit may be drawn on by the Cooperative to:
 - 1. Pay for all costs (including accounting, engineering and legal) of studies, reviews, analyses, and appraisals by and for the Cooperative in its evaluation of the Qualifying Offer and
 - 2. Pay costs incurred by the Cooperative in seeking regulatory approvals.

Adopted on this 26th day of August, 2021.

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Calvin K. Murashige (Sep 12, 2021 17:39 HST)

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Secretary