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Utilities Commission

Third-Party Solicitations Process Improvements Staff Proposal

CPUC ENERGY DIVISION STAFF

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1 Introduction

This staff proposal suggests improvements to the required process for third-party solicitations for energy efficiency (EE) programs overseen by the investor-owned utility (IOU) program administrators (PAs). The original rationales for the IOU PA portfolio requirement for third-party EE programs was to encourage innovation and achieve more cost-effective energy savings from EE program programs.¹ The current framework for issuing solicitations for third-party programs was launched in 2018 and is ongoing today. Addressing improvements to the existing third-party solicitation process, laid out in Decision (D.)18-01-004, prior to considering the overall energy efficiency business plan applications by all PAs, will enable needed improvements to solicitations launching in the near future.

The IOU solicitations teams have developed multifaceted processes for issuing Requests for Abstracts, Requests for Proposals, proposal scoring, and contract negotiations. Upon review of these processes, many topics of interest with third-party solicitations have been identified through the Procurement Review Groups (PRGs), the Independent Evaluator (IE) reports on the solicitation process, seven semi-annual public workshops for informal discussion and problem-solving among stakeholders, and one CPUC all-party meeting held in October 2020. Identified issues have been considered and, where possible, addressed through PRG and/or Energy Division guidance to IOUs. Various issues identified by the involved parties are outstanding as they require changes to a prior decision or have not been resolved to the satisfaction of stakeholders. These fall into the following categories, which are included in this staff proposal: revision to the standard and modifiable terms and conditions, reducing solicitations process burdens, broadening bidder participation, supporting

¹ D.16-08-019 “Decision Providing Guidance for Initial Energy Efficiency Rolling Portfolio Business Plan Filings,” available at <https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fdocs.cpuc.ca.gov%2F%2FpublishedDocs%2F%2FPubliched%2FG000%2FM166%2FK232%2F166232537.docx&wdOrigin=BROWSELINK>, (pg. 70).

innovation, improving transparency to the bidder community regarding future market options, and other improvements.

2 Background

In January 2018, the California Public Utilities Commission (CPUC) adopted D.18-01-004², which established a two-stage solicitation approach to soliciting third-party program design and implementation services as part of the energy efficiency portfolio. The CPUC required a set of standard and modifiable contract terms and conditions, established additional steps for the development and approval of third-party contracts, and reserved the right to modify this process in the future.

D.18-01-004 established the use of PRGs to represent diverse stakeholder interests and provide discrete feedback points during the third-party solicitation process. The Decision also required the IOU PAs to hire a pool of IEs with energy efficiency expertise to monitor the entire solicitations process, file semi-annual and solicitation-specific reports, and provide consultation support and detailed observations to the PRGs. Semi-annual reports authored by the IEs on the solicitations detailing the prior six months of activity have been filed with the CPUC eight times by the IOUs since 2018. These reports capture process issues and suggestions for improvement and have led to changes in IOU and PRG operations. CPUC staff have hosted six all-PRG-IE-IOU member workshops and eight semi-annual public stakeholder workshops over the same time period that have also contributed to the ongoing development and improvement of the solicitations process.

In response to feedback at these stakeholder and PRG meetings, CPUC Staff commissioned an evaluation report from the independent research firm Opinion Dynamics. The objective of the research was to evaluate the third-party solicitations and contract award process and identify improvements. The following three distinct components were assessed through an analysis of

² D.18-01-004 “Decision Addressing Third Party Solicitation Process for Energy Efficiency Programs”, available at <https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M205/K560/205560586.PDF>.

solicitations materials, as well as IE, IOU, and bidder interviews: 1) the two-stage solicitation approach, 2) the evaluation and selection processes, and 3) the contract negotiations and terms. This report was published on January 28, 2022 on the ED Public Document Area.³ The semiannual workshops, stakeholder feedback therein, recommendations from the evaluation report, and the record as of June 18, 2022 from the business plan application proceeding (A.22-02-005 et al.) inform the staff proposals and questions below.

It is the responsibility of all parties submitting questions or comments in response to this staff proposal to adhere to confidentiality claims in conformance with General Order 66-D. An example of this sensitive information includes specific information from a contract between IOUs and third-party program Implementers such as pricing. Such information can be provided to the CPUC for analysis, but needs to be marked confidential and filed under seal. Parties needing assistance with how to file under seal may contact Public.Advisor@cpuc.ca.gov. See General Order 66-D for guidance on submitting comments in response that contain confidential information.⁴

3 Revision to Standard and Modifiable Terms and Conditions Considering Risk to Bidders and Energy Efficiency Portfolio Segmentation

Decision (D.) 18-10-008 adopted Third-party Contract Terms and Conditions. The decision set forth the provisions of required standard and modifiable terms and conditions that utility program administrators must include in their portfolio of contracts with third-party implementers of energy efficiency programs (hereafter referred to as "Implementer"). The modifiable terms are also the

³ "Third-Party Solicitations for Energy Efficiency Process Evaluation", CPUC Energy Division's Public Document Area, available at <https://pda.energydataweb.com/#!/documents/2581/view>.

⁴ General Order No. 66-D Revision 1, available at <https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M302/K016/302016447.pdf>.

starting point for negotiation and may only be modified by mutual agreement of the utility and the Implementer.

CPUC staff has received feedback on terms and conditions from IEs, bidding parties, and other stakeholders. Overall, the stakeholders have raised a general concern that the contract terms require the Implementer bear a much greater share of the risk than they did prior to energy efficiency decisions stating a preference for pay-for-performance.⁵ Further, they claim the greater risk to Implementers is stifling innovative design since untried innovations can carry greater uncertainty.⁶ Revisiting the CPUC adopted Standard and Modifiable Terms and Conditions, consistent with legal requirements, due process and Public Utilities Code Section 1708, is warranted at this time 1) to review opportunities to improve fairness and balance or risk in terms and conditions, especially for small companies, and 2) because the new reformed energy efficiency policy for a segmented portfolio – with resource acquisition, market support, and equity segments – opens the question of whether terms and conditions, and preference for pay for performance, should be uniformly applied across all of these segments.

Please consider and respond to the proposed revisions and questions to these standard and modifiable terms assuming they would apply to all new EE portfolio contracts. In Section 3.3.4 there is a question on when terms and conditions should apply.

3.1 Required Standard Terms and Conditions

3.1.1 Performance Assurance and Bonding

The current required standard terms and conditions for performance assurance and bonding appears under “Eligibility” and reads:

⁵ “January 31, 2022 EE 3P Solicitations Stakeholder Forum Meeting Minutes”, [available at https://www.caeec.org/cpuc-third-party-public-meetings](https://www.caeec.org/cpuc-third-party-public-meetings), (pg. 10).

⁶ *Ibid.*

“Performance Assurance; Bonding. At all times during the performance of the Services, Implementer providing any direct installation services represents, warrants and covenants that it has and shall, and shall cause each Implementer Party to, obtain and maintain, at its sole cost and expense, all bonding requirements of the California State License Board, as may be applicable. Implementer shall also maintain any payment and/or performance assurances as may be requested by Company during the performance of the Services.”⁷

Smaller companies may not have the cashflow or resources to offer a letter of credit or cash deposit as collateral. The Opinion Dynamics report noted that requiring the Implementer to make an upfront payment to the utility can discourage small businesses to bid or can cause a competitive disadvantage for bidders seeking removal of Performance Assurance for their contract.⁸ Additionally, some stakeholders assert it may be sufficient that the IOUs have assurance through pay for performance terms (see Section 3.2.1 for more on payment terms) without an additional upfront payment.⁹

Proposal:

CPUC staff propose greater consistency across the utilities in when, and to what degree, additional performance assurances may be required of the Implementer. Specifically, staff propose:

- A performance assurance shall not be required by default. Rather, the IOU seeking performance assurance must assess each case and be able to justify, particular to the financial history or stability of personnel (i.e. tenure) of a company, that there is high risk of a company not delivering on performance terms in the contract such that an additional performance assurance provision is necessary.

⁷ D.18-10-008 “Decision Addressing Workforce Requirements and Third-Party Contract Terms and Conditions,” available at <https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M234/K071/234071190.PDF>, (pg. A-2).

⁸ “Third-Party Solicitations for Energy Efficiency Process Evaluation”, CPUC Energy Division’s Public Document Area, available at: <https://pda.energydataweb.com/#!/documents/2581/view>, (pg. 35).

⁹ “January 31, 2022 EE 3P Solicitations Stakeholder Forum Meeting Minutes”, [available at https://www.caeecc.org/cpuc-third-party-public-meetings](https://www.caeecc.org/cpuc-third-party-public-meetings), (pg. 5-6).

- When a performance assurance is justified, there should be an upper limit to the performance assurances required, specifically, 3% of total contract value without incentives.

Accordingly, CPUC staff proposes that the final sentence “Implementer shall also maintain any payment and/or performance assurances as may be requested by Company during the performance of the Services.” be struck from the Required standard term and condition for Performance Assurance; Bonding.

Questions:

- 3.1.1.1 What is the burden or impact of requiring upfront payment or collateral to the bidder and implementer?
- 3.1.1.2 What is the benefit of requiring upfront payment or collateral to the utility or ratepayers?
- 3.1.1.3 Do parties support striking the final sentence to the “performance assurance; bonding” term?
- 3.1.1.4 If not, why, and are there amendments to the term and condition that you would support?
- 3.1.1.5 Do parties support a 3% upper limit to performance assurances required, when justification that a performance assurance is necessary is provided? If not, explain. Please also propose an alternative that would allow greater consistency across utilities and ease ability for small companies with limited cashflow to bid and contract with utilities.
- 3.1.1.6 Are there legal issues relevant to changing the current rules? Explain.

3.1.2 Insurance

The following required standard term and condition for insurance appears under “Eligibility” and reads:

“Insurance. At all times during the performance of the Services, Implementer represents, warrants and covenants that it has and shall, and shall cause each Implementer Party to, obtain and maintain, at its sole cost and expense, the insurance coverage requirements specified in

[Insert IOU-specific Appendix containing insurance requirements to be developed by the parties based on the Scope of Work].”¹⁰

The IOUs have subject matter experts who assess risk and set standard amounts for insurance types and minimum coverage limits that apply across all of the utilities’ contracts, or “enterprise-wide.” The types of insurance found in IOU contracts with energy efficiency have included automobile liability, cyber risk liability, employer's liability, employee dishonesty liability, general liability, pollution liability, professional liability, umbrella insurance, and worker’s liability.

Despite the instruction that insurance requirements be developed by the parties based on the Scope of Work, it may be the case that the IOUs use their enterprise-wide insurance requirements and associated coverage amounts as the starting point for negotiation with the party. For example, cyber security coverage may be primarily intended to insure against the potential damages associated with the handling of customer Personally Identifiable Information. However, many EE programs may never involve the collection or transfer of this data by the third-party implementer and thus this insurance would be unnecessary. Implementers that are small businesses state they are not able to attain cybersecurity insurance because insurance companies will not offer them such a policy.¹¹ Similarly, pollution liability may be primarily intended to insure against risk associated with on-site work, which would not be relevant to certain EE programs that are entirely virtual.

Also, bidders may not be aware of the insurance types the IOU will require, or liability minimum coverage limits, until the contract negotiation stage, after substantial bidder investment into the solicitations process. At this time, the bidder may seek quotes from insurance providers to estimate premiums for the required insurance coverages and accept the requirement, counter the IOU’s

¹⁰ D.18-10-008 “Decision Addressing Workforce Requirements And Third-Party Contract Terms And Conditions,” available at <https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M234/K071/234071190.PDF>, (pg. A-2).

¹¹ July 11, 2022 “EE 3P Solicitations Stakeholder Forum Meeting”, available at <https://www.caeccc.org/cpuc-third-party-public-meetings>.

insurance requirement during negotiation, or revise the price of the contracted work to account for the cost of insurance.

Proposal:

CPUC staff proposes that instruction in the current term and condition, that insurance requirements are “to be developed by the parties based on the Scope of Work” be adhered to in the following manner:

IOUs and Implementers in contract negotiation should not start with the IOUs’ enterprise-wide insurance requirements. Rather, the negotiating parties shall assess any property or site being worked on through the program, the value of the property, the monetary size of the contract, and other pertinent information of personnel, data, and property involved to justify an applicable set of types of insurances with appropriate minimum coverage limits. The resulting set of insurance requirements is thus tailored to the Scope of Work. As such, it may be appropriate that insurance required of implementers vary, including in the following ways:

- The minimum coverage limits for insurance are not the same across all contracts, but rather vary according to contract size and other pertinent variables;
- An energy efficiency Implementer whose program has no collection or transfer of any Personally Identifiable Information through the Implementer or its subcontractors need not attain cyber security coverage;
- An Implementer that is running a strictly virtual program, not involved with any on-site changes, need not secure pollution liability coverage;
- There may be other contracts that, by their nature, do not present risk that requires special insurance coverage.

Questions:

- 3.1.2.1 What upfront disclosure of the types of insurance and coverage amounts required for each insurance type should the IOUs make during the solicitation process?
- 3.1.2.2 When in the solicitation process should the IOUs disclose their insurance requirements and why?
- 3.1.2.3 Should the IOUs be required to justify how the insurance type is relevant to the anticipated scope of work for programs resulting from the solicitation? Why or why not?
- 3.1.2.4 Do parties support the staff proposal for contracts with insurance requirements tailored to their specific scope of work? Why or why not?
- 3.1.2.5 Are there insurance types that are especially costly or present other challenges for Implementers to attain? Provide specifics on the challenge that attaining the coverage presents, and any recommendations you propose CPUC consider to mitigate this challenge.
- 3.1.2.6 In what circumstances is it appropriate for an Implementer to hold professional liability insurance, cybersecurity insurance, employee dishonesty insurance, and/or pollution insurance?
- 3.1.2.7 Are there specific program scopes of work for which certain types of insurance should not be required?

3.2 Modifiable Terms and Conditions

D.18-10-008 also established Modifiable Terms and Conditions that the utility program administrators must include as modifiable or negotiable contract terms for third parties bidding to design and/or deliver EE programs.

3.2.1 Payment Schedule and Terms, Including Pay-for-Performance Payment Provisions

The modifiable RFP instructions for payment terms was adopted in D.18-10-008 and detailed in Attachment B to that Decision, as follows:

“Payment Terms.

[Payment terms will vary based on the Program proposed, and the Company will evaluate bids, in part, on creative proposals that spread the risk of non-performance and deliver a quality and cost-effective program at a reasonable cost to ratepayers. Table 2 outlines some potential contract categories with potential associated payment schedules and payment terms, if applicable; however, the Company will evaluate payment terms based on the bid and the nature of the Program. Table 2 is not intended to be exhaustive, and additional or modified payment categories may be proposed in the filing and/or in specific agreements, as negotiated.

Company prefers Program Proposals that include a “pay for performance” fee structure component that conditions payments from Company to Implementer based on specific savings or other metrics that advance energy efficiency portfolio goals (i.e. Meter Based). These pay-for-performance models may include performance security in a form of cash or line (or letter) of credit to ensure that implementers are meeting key performance metrics such as net lifecycle energy savings and cost-effectiveness and that permit Company to draw against such performance security if certain performance conditions and/or KPIs are not met. Percentages of performance security and metrics will be negotiated between the Implementer and Company.

Program proposals with greater proportions of funds tied to the delivery of net lifecycle energy savings measured and verified post-installation will be preferred over program proposals that correlate performance to program activities (installations) associated with pre-installation savings estimates (deemed), or proposals with large proportions of funds dedicated to Program Implementation activities that are not directly tied to net lifecycle energy savings, respectively.] *{Comment: modifiable RFP Instructions}*”¹²

As discussed in “Performance assurances” section above, cashflow may be difficult for smaller bidders. Further, CPUC staff proposes above that these performance assurances (also referred to as “performance security” in Table 2 of D.18-10-008 Attachment B – upfront payments in the form of letter of credit or cash from the Implementer to IOU as collateral) should only be required in exceptional cases. IEs have expressed that with a pay-for-performance model there is already a built-

¹² D.18-10-008 “Decision Addressing Workforce Requirements And Third-Party Contract Terms And Conditions”, available at <https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M234/K071/234071190.PDF>, (pg. B-10).

in incentive for the Implementer to perform, as they will not receive full payment for their work otherwise.¹³

Small or Diverse Business Enterprise (DBE) subcontractors may need to receive payment up-front, providing them the working capital to implement their programs to achieve performance commitments and deliverables. D.18-01-004, Conclusion of Law 21 stated that “pay-for-performance arrangements should be encouraged in the third-party solicitations and the utility PAs should design payment structures in their standard contracts to address these types of arrangements.”¹⁴ However, rigidity with regards to the preference for pay-for-performance, for example, tying 100% of payments to the Implementer to performance metrics, may make contracting infeasible for certain bidders. For example, to address long customer project cycle times and thus long durations until verified savings are achieved, a contract could offer milestone or deliverable based payment arrangements to compensate the Implementer for work performed prior to realizing energy savings. For example, these arrangements could compensate the Implementer for start-up milestones and/or deliverables such as drafting an Implementation Plan, customer recruitment, or completion of project construction periods.

Finally, D. 18-10-008 states “a general preference for incentive payment structures to customers that are increasingly based on verified savings, to the extent feasible.”¹⁵ This payment arrangement is referred to as “pay-for-performance” below. The preference is evident in the modifiable RFP instructions which signals funds payments be tied to net lifecycle energy savings. Some parties have suggested that overreliance on pay-for-performance arrangements can lead to less innovative programs being offered or limit implementer ability to target underserved customer

¹³ “January 31, 2022 EE 3P Solicitations Stakeholder Forum Meeting Minutes”, [available at https://www.caeecc.org/cpuc-third-party-public-meetings](https://www.caeecc.org/cpuc-third-party-public-meetings), (pg. 6).

¹⁴ D.18-01-004 “Decision Addressing Third Party Solicitation Process for Energy Efficiency Programs”, available at <https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M205/K560/205560586.PDF>, (pg.59).

¹⁵ D.18-10-008 “Decision Addressing Workforce Requirements And Third-Party Contract Terms And Conditions,” available at <https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M234/K071/234071190.PDF>, (pg. 62).

segments.¹⁶ Furthermore, recent reform of the energy efficiency portfolio to use of Total System Benefit (TSB) metric over net lifecycle energy savings as the adopted goals metric, and segmentation of the portfolio into resource acquisition, market support, and equity segments may call into question whether preference for pay-for-performance is appropriate. Several solicitations currently running and those to be launched over the coming 18 months will be in the Market Support and Equity Segments.

Questions:

- 3.2.1.1 Are there changes to these modifiable RFP instructions for Payment Terms and Table 2 that would improve the number and diversity of businesses bidding for contracts? If so, provide specific changes you propose.
- 3.2.1.2 Would it be appropriate for an Implementer pay cash or a letter of credit (i.e. a “performance security” to a utility) such that Utility and ratepayers have confidence the Implementer will complete the contracted scope of work and meet performance requirements within? Explain what circumstances might or might not merit such an arrangement.
- 3.2.1.3 Should all language on performance security be removed from this Section and Table 2? Why or why not?
- 3.2.1.4 If an IOU does collect against a performance security, should collected funds offset recovery of funds from ratepayers or be added to the PAs budget for their energy efficiency portfolio? Why?
- 3.2.1.5 Would certain payment terms or structures allow for businesses that require early payment to have working capital on hand to implement their programs (e.g. milestone or deliverable based payment arrangements; higher performance payments for early performance milestones)? What are such terms or structures and why would they help bidders?

¹⁶ “Reply of CEDMC to Parties’ Responses and Protests to Program Administrators’ Business Plan and Energy Efficiency Portfolio Filings”, available at <https://docs.cpuc.ca.gov/SearchRes.aspx?DocFormat=ALL&DocID=471484949>, (pg.11-12).

- 3.2.1.6 Now that the EE portfolio is segmented and utilizing the TSB metric, should the stated preference for pay-for-performance based on verified savings be amended to be based on verified TSB for the Resource Acquisition segment?
- 3.2.1.7 Should performance payments be tied to a CPUC preferred metric for programs in the Equity and Market Support segments, or should the appropriate performance metric pertinent to the scope of work be left to contracting parties to negotiate?
- 3.2.1.8 Are there sectors, segments, or program types for which it is inappropriate to use a pay-for-performance structure? Why?

3.2.2 Diverse Business Enterprises

In April 2022, D.22-04-035¹⁷ modified General Order 156, the Rules Governing the Development of Programs to Increase Participation of Women, Minority, Disabled Veteran, Lesbian, Gay, Bisexual and Transgender (LGBT) and Persons with Disabilities Business Enterprises in Procurement of Contracts from Utilities, Community Choice Aggregators, and Electric Service Providers, as Required by Public Utilities Code Sections 366.2 and 8281-8286. The General Order now includes persons with disabilities business enterprises.

Proposal:

As such, CPUC staff proposes the “Diverse Business Enterprise” definition as it appears in modifiable term and condition “Diverse and Disadvantaged Business and Employee Terms, Including Small Businesses, if Applicable” be amended to include persons with disabilities business enterprises, as follows:

¹⁷ D.22-04-035 “Decision Revising General Order 156 Supplier Diversity Program to Implement Senate Bill 255, Adopt a Voluntary Procurement Goal for LGBT Business Enterprises, Incorporate Persons with Disabilities Business Enterprises, and Other Updates,” available at <https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M466/K761/466761944.PDF>.

“Diverse Business Enterprise” means a diverse business enterprise, which shall consist of SBEs and women, minority, disabled veteran, lesbian, gay, bisexual, or transgender business enterprises, persons with disabilities business enterprises, as more particularly set forth in CPUC General Order 156. *{Comment: placeholder for Agreement term}*

Question:

3.2.2.1 What other, if any, changes to GO 156 require update/amendments to these Energy Efficiency Terms and Conditions or third-party solicitation process?

3.3 Other Terms and Conditions issues

3.3.1 Flow Down of Contract Terms and Conditions from Implementer to Subcontractors

The Implementer is ultimately responsible for the terms and conditions of their contract with the IOU being met. Therefore, the Implementer is responsible for assuring their subcontractors are in compliance with the contract. The CPUC-adopted standard and modifiable terms and conditions make explicit mention in some places that the term and condition applies to subcontractors as well. In other places where there is not explicit mention of subcontractors. It is unclear if the IOU has required that the Implementer flow the provision down to their subcontractors.

Given the cashflow and risks from pay-for-performance issues expressed by stakeholders¹⁸, the Opinion Dynamics Evaluation report of third-party solicitation process recommended that a greater diversity in EE Implementers could be achieved via large companies holding a contract with the IOU as the Implementer (or “prime” contractor), and partnering with multiple small and diverse businesses as subcontractors. The viability of this recommendation might hinge on the flexibility or stringency of requirements on the Implementer to flow contract provisions down to

¹⁸ “January 31, 2022 EE 3P Solicitations Stakeholder Forum Meeting Minutes”, available at <https://www.caeecc.org/cpuc-third-party-public-meetings>, (pg. 6).

subcontractors. Additionally, subcontractors may perform work that is specific and distinct from the work performed by the prime contract holder. In some cases, the contract requirements for certain insurance or licensing may not be relevant to the targeted scope of work performed by the subcontractor, and thus may be an unnecessary burden. Of course, a prime contractor may not avoid any contract term by the use of subcontractors, so this discussion is not intended to suggest otherwise.

Questions:

- 3.3.1.1 Assuming a contractor may not avoid obligations under its contract by the use of subcontracts, is any explicit direction needed on which terms flow down to subcontractors? Are there terms of a contract that do not or should not flow to subcontractors? What is the legal basis for your response?
- 3.3.1.2 If your response suggests that certain contract provisions do not or should not flow to subcontractors, what direction should be given? Specify in response:
- a) Which terms and conditions must flow down to subcontractors and why, including a discussion of applicable law or precedent,
 - b) If you contend there should be terms and conditions in a contract that should not flow to subcontractors, explain what those terms and conditions are and why flexibility should exist, with discussion of applicable law or precedent, and
 - c) For the terms and conditions you contend should not automatically be imposed on subcontractors, in what circumstances is it inappropriate or overly burdensome for terms and conditions to flow down to a subcontractor? For example, do all subcontractors have to also hold all insurance IOUs required of the prime Implementer, or do all subcontracts need hold license for the type of work the prime Implementer is responsible to perform? For any such term or condition, explain how your position ensures the contractor is not avoiding its obligations under the contract by using a subcontractor.

3.3.2 Conflicting Terms

D. 18-10-008 states that “the utility may offer additional modifiable terms beyond those included in Attachment B”¹⁹. Even then, the modifiable terms may not be modified unilaterally, but only by mutual agreement between the IOU and the third-party.” Further, “[a]ny additional terms included by utilities, including modifiable terms, must not conflict or otherwise undermine the meaning or intent of the standard and modifiable terms adopted in this decision.”²⁰ The IOUs may be inconsistent in clearly conveying in their final contract with Implementers which terms and conditions prevail should a conflict exist within a contract.

Questions:

- 3.3.2.1 Should CPUC require IOUs include language in their contracts on which term and condition prevails in the case there is a conflict within the contract terms and conditions between an IOUs added modifiable term and condition and the CPUC decision ordered standard or modifiable term and condition? Why or why not?
- 3.3.2.2 If so, what language do you propose be added to IOUs contracts with Implementers?

3.3.3 Timing of Preparation of Terms

To date, some IOUs have required that bidders, in response to request for abstract and/or request for proposal stages of the solicitation, submit their proposed redlines to terms and conditions. IEs and PRG members have strongly discouraged and advised against IOUs requiring redlines from the bidders prior to their selection and advancing to the negotiation phase due to the

¹⁹ D.18-10-008 “Decision Addressing Workforce Requirements And Third-Party Contract Terms And Conditions” available at <https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M234/K071/234071190.PDF>, (pg.58).

²⁰ Ibid (pg. 2).

unnecessary burden to the bidder at that stage of solicitation.²¹ It is also possible that the IOU could be making a judgement on potential program Implementers based on a preview into the effort that will be required by both parties in negotiation.

Questions:

- 3.3.3.1 Should IOUs ask bidders to provide redlines to terms and conditions in their proposals. If so, why and at what stage (request for abstract, request for proposal, bidder interview, contract negotiation)?
- 3.3.3.2 Should IOUs be allowed to score bids based on bidders redlines to terms and conditions? Why or why not?
- 3.3.3.3 What benefits do you see in bidders providing redlines to terms and conditions in their proposals (e.g. does this practice reduce the back-and-forth that will be required during contract negotiation and how is this beneficial to the bidder and/or IOU)?
- 3.3.3.4 What additional guidance or requirements regarding the timing and process of redlining of terms and conditions by bidders do you propose?

3.3.4 Applicability of Terms

Currently, the CPUC standard and modifiable terms and conditions in D.18-10-008 apply for all IOUs' energy efficiency portfolio contracts with non-local government partner implementers, and

²¹ "July 11, 2022 EE 3P Solicitations Stakeholder Forum Meeting", available at <https://www.caeccc.org/cpuc-third-party-public-meetings>.

the CPUC standard and modifiable terms and conditions in D.19-08-006²² apply for all IOUs' energy efficiency portfolio contracts with local government partner implementers.

Further, the income qualified assistance programs (Energy Savings Assistance) recent decision, D. 21-06-015,²³ required IOUs to use the required standard terms from D.18-10-008 in contracts with Energy Savings Assistance Program implementers.

²² D.19-08-006 “Decision Adopting Standard Contract for Energy Efficiency Local Government Partnerships”, available at <https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M310/K261/310261656.PDF>.

²³ D.21-06-015 “Decision on Large Investor-owned Utilities’ And Marin Clean Energy’s California Alternate Rates For Energy (CARE), Energy Savings Assistance (ESA), And Family Electric Rate Assistance (FERA) Program Applications For Program Years 2021-2026”, available at <https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M387/K107/387107687.PDF>.

Questions:

3.3.4.1 Please comment on any exceptions or circumstances when terms and conditions should only apply to a subset of solicitation/contract types. Consider for example, should terms and conditions only apply to:

- contracts with companies of a certain size;
- contracts for Resource Acquisition programs;
- contracts of a certain size budget?

3.3.4.2 To which contracts or solicitations should any changes to terms and conditions or solicitation processes apply? Consider whether changes should apply to:

- new contracts only (contracts resulting from solicitations where the RFP hasn't yet released as of date of decision);
- existing contracts (should IOUs be required to reenter into negotiation with their Implementer on terms related to the changes made in this decision if the Implementer is able to show significant impact – such as, that the term update would have a $\geq 5\%$ impact on the cash flow available for the business/contract);
- large IOU's Energy Savings Assistance contracts?

3.3.4.3 Are any of your responses to questions in Section 3 also relevant the contract terms and conditions for Local Government Partners adopted in D.19-08-006? If so, which ones?

4 Reducing Solicitations Process Burdens

4.1 Amend the Two-Stage Requirement in D.18-01-004

D.18-01-004, Conclusion of Law 5, established that the two-stage solicitation approach – a Request for Abstract (RFA) stage followed by a Request for Proposal (RFP) stage – be the predominant approach for third-party solicitations unless there was a specific schedule-related reason that only one-stage (the RFP stage) be permitted. Parties have suggested that a single-stage approach would be sufficient in many cases to have an adequately competitive bidding process that

is fair to bidders.²⁴ This change could improve the efficiency of the solicitations process by shortening the timeframe by several months and thereby potentially reduce burdens for bidders to participate and the IOUs' administrative burden and costs associated with designing and scoring materials.

Proposal:

- Consistent with legal requirements, update guidance from D.18-01-004 to state the two-stage solicitation approach is an option but not the predominant approach.
- The IOUs should be required to submit plans to the PRG on whether they plan to hold a single- or two-stage solicitation for each solicitation they expect to launch and a rationale for why it is appropriate.
- The PRG should be consulted and given the opportunity to provide timely input into the decision of the solicitation structure.

Questions:

- 4.1.1 Do parties support the staff proposal to increase the flexibility of solicitation stages?
- 4.1.2 What should otherwise or additionally be done to amend the current two-stage requirement in D.18-01-004?

4.2 Oversight of Amendments to Third-Party Contracts

Management of contracts between implementers and PAs may require flexibility so that Implementers and PAs can be responsive to ongoing developments in the market and otherwise.

²⁴ “Reply of CEDMC to Parties’ Responses and Protests to Program Administrators’ Business Plan and Energy Efficiency Portfolio Filings”, filed by CEDMC on 04/28/2022 Conf# 179866, available at <https://docs.cpuc.ca.gov/SearchRes.aspx?DocFormat=ALL&DocID=471484949> (pg.6).

There may be occasions where third-party solicited contracts will need to be amended to respond to changing market needs, updated state or CPUC policy, and to incorporate continuous improvement. These amendments can be time sensitive, routine, unsubstantial, and/or line-of-business-driven. However, there is also the possibility of amendments that result in significant changes to program design or savings targets, without parties having an opportunity for review and response, as they typically would via the PRG or Tier 2 AL filings for an initial contract execution. D. 18-01-004 established the requirement for advice letter approval for initial contract execution in order to mitigate “risks of contracting bias and poor RFP design leading to unbalanced portfolios and third-party solicitation, program, and/or portfolio failure” (Finding of Fact 7 and 9).²⁵

Proposal:

CPUC staff proposes the four IOUs be required file a Tier 1 AL for all third-party solicited contract amendments that meet the following triggers:

- A. Third-party contract that was (1) valued at \$5 million or more and/or with a term of longer than 3 years, and (2) was filed via Tier 2 advice letter that was originally approved by the CPUC.

AND one or more of the following triggers:

- B. Amendment increases or decreases the program budget by 20% or more from original contract budget;
- C. Amendment increases the program delivery period by 18 months or more from the original contract delivery period;
- D. Amendment results in material changes to payment terms such as a change from a performance-based contract to a time and materials contract; or

²⁵ D.18-01-004 “Decision Addressing Third Party Solicitation Process for Energy Efficiency Programs” available at <https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M205/K560/205560586.PDF>, (pg. 54).

- E. Amendment increases or decreases projected performance metrics by 15% or more from the original contract (i.e., energy savings, cost-effectiveness, total system benefit, greenhouse gas reductions or KPIs for non-resource programs)
- F. Amendment adds or removes a performance metric”

For amendments that do not trigger an advice letter filing, CPUC staff proposes the IOU report in their annual report an aggregated summary of the number of contracts amended and the nature of those amendments.

Questions:

- 4.2.1 Is this framework and the Tier 1 AL requirement appropriate for disclosing contract amendments? Does it meet legal requirements for contract approval set forth in applicable CPUC decisions?
- 4.2.2 Do you support, or how would you amend the triggers in staff proposal? Consider, e.g. if an Implementer substituting a DBE subcontractor for a non-DBE subcontractor should be added as a trigger.
- 4.2.3 Would CPUC staff's proposed triggers present an inappropriate burden or delay to program Implementers or PAs?
- 4.2.4 Would methods to improve transparency of contracts that are amended, such as a report on amendments in PAs' annual report, be sufficient? Why or why not, and for what types of amendments would an alternative method be sufficient?

5 Broadening Bidder Participation

5.1 Concentration of EE Funds with a Few, Large, Third-Party Implementers

Since the third-party solicitations process was established, 86 solicitations have been run, resulting in 78 executed contracts with 32 third-party implementers. A total of \$1.6 billion has been

budgeted for these contracts, with a median contract value of \$8.8 million and an average length of 56 months. The single implementer awarded the highest value has \$798 million across eight contracts. The overall EE third-party portfolio concentration is high, with two firms holding 61% of the awarded funds across the four IOUs and one firm holding 86% of the awarded funds from SCE.

The result from the initial solicitations issued was the awarding of contract funds to mostly a few, large third-party Implementers. CPUC staff is concerned that this may limit competition, reduce opportunities for small and diverse bidders, and increase the risk of program failure.

Questions:

- 5.1.1 What are the risks and benefits resulting from the concentration of EE contracts with a few, large companies?
- 5.1.2 Should the CPUC establish a cap on the percentage of budget or number of contracts of the overall or IOU-specific (i.e., not including statewide programs) outsourced portfolio that a single contract or single entity can have? If so, how should the cap be established? Are there legal issues that come into play if concentration requirements are adopted?
- 5.1.3 Should the CPUC consider goals for the number of entities the IOU holds contracts with for EE third-party programs? If so, how should the goals be established?
- 5.1.4 If yes to either a cap or goals, should having a diversity of sub-contractors factor into the calculation of hitting the cap or goals? If so, how?
- 5.1.5 What other options are there for mitigating risks associated with EE contract concentration?

5.2 Supporting Diverse Business Enterprises (DBEs)

Parties have expressed a desire to further the opportunities for DBEs in the third-party solicitations process.²⁶ In addition to the recommendation from Opinion Dynamics report (see Section 3.3.1) stakeholders, IEs, PRG have made proposals including setting a minimum percentage of EE portfolio or contracts / subcontracts with DBE suppliers, explicitly scoring DBE certification in the solicitations process, or requiring targeted outreach.²⁷

Questions:

- 5.2.1 Should the CPUC or the IOUs further promote the opportunities for DBEs in third party solicitations? How?
- 5.2.2 Are there solicitation opportunities that can be more appropriately structured to attract DBE vendors to submit bids? If so, which type of solicitations would present this opportunity?
- 5.2.3 Are there ways to promote and encourage DBE participation as subcontractors?

6 Supporting Innovation

6.1 Expansion of EE Procurement Models

Parties have suggested opening the potential procurement channels beyond the currently utilized targeted solicitations, issued in two stages (RFA and RFP), to allow for (1) a market access model (similar to the summer reliability market access procurement model approved in D.21-12-

²⁶ July 11, 2022 “EE 3P Solicitations Stakeholder Forum Meeting”, available at <https://www.caeccc.org/cpuc-third-party-public-meetings>.

²⁷ “January 31, 2022 EE 3P Solicitations Stakeholder Forum Meeting Minutes”, available at <https://www.caeccc.org/cpuc-third-party-public-meetings> (pg. 8).

011)²⁸ and/or (2) open all-source solicitations.²⁹ The market access model does not involve a solicitation or the execution of a contract, but rather the development of pre-determined eligibility criteria to screen implementers. These pre-approved implementers then may submit projects that they identify and implement and be compensated under a standard payment structure. This approach may garner additional participation from smaller implementers who lack the resources to participate in lengthy and costly solicitations. The open, all-source solicitation model is similar to the existing solicitations framework but does not rely on the IOU PA to design the RFA and RFP to meet a specific sector, segment, or EE technology, service, or market. Instead, a solicitation is issued with flexibility for the third-party implementer to identify the program or portfolio gap (unoffered measure class or delivery channel) that their proposal would address and submit bids openly, without defined RFA and RFP timelines or deadlines. Increasing PA flexibility to rely on these procurement models may reduce the burdens faced by administrators and implementers under the existing solicitations framework and yield new or innovative program proposals.

Questions:

- 6.1.1 Would it be appropriate for these procurement models to be incorporated into or partially replace the current two-stage solicitations process for programs that count towards the outsourced budget threshold?
- 6.1.2 How would the duties and authority of the PRGs and the IEs change as a result of utilizing these or other proposed procurement models?

²⁸ “PG&E Energy Efficiency 2024-2031 Strategic Business Plan Exhibit 1”, available at <https://docs.cpuc.ca.gov/SearchRes.aspx?DocFormat=ALL&DocID=451412249>, (pg. 3-14 – 3-15).

²⁹ “Reply of Envervee to Parties’ Responses and Protests to Program Administrators’ Business Plan and Energy Efficiency Portfolio Filings”, available at <https://docs.cpuc.ca.gov/SearchRes.aspx?DocFormat=ALL&DocID=471485582>, (pg.3).

6.2 Intellectual Property

D. 18-10-008 section 4.3.3. stated:

“the Commission has an interest in utilizing intellectual property developed under the agreement if it can be useful to unlocking energy savings opportunities more broadly, even if held by the IOUs on behalf of ratepayers. We recognize that operationalizing this concept is a more complex task than can be undertaken in the context of these contract terms. It may be a topic appropriate for discussion among the CAEECC [California Energy Efficiency Coordinating Committee] members for the future. In the meantime, we encourage the IOUs to consider bid evaluation criteria that could get at the degree to which the proposed program design develops data and intellectual property of value to the overall energy efficiency industry and would provide that information on an open platform to be readily utilized.”³⁰

CPUC staff have not seen notable agreements by contracted entities (Implementer or IOU) to make any information available on an open platform at any point in time. More open data may facilitate a wide diversity of market actors (current and potential future energy efficiency program designers and implementers) to learn from existing programs, and thus unlock future energy savings opportunities to be realized by future more fully informed bidders able to prepare more innovative bids.

The recent third-party solicitation process evaluation report found that incumbent Implementers may have access to customer data beyond what a new bidder would have access to. Such access may give the incumbent an advantage in proposing programs and estimating savings.³¹ Thus, the evaluation report suggested that data contained in public filings, aggregate data from the California Energy Commission’s Residential Appliance Saturation Survey and California Lighting and Appliance Saturation Study, and other sources could be made known and accessible to bidders in a way that protects customer privacy and grid resource integrity.

³⁰ D.18-10-008 “Decision Addressing Workforce Requirements and Third-Party Contract Terms and Conditions”, available at <https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M234/K071/234071190.PDF>, (pg. 51).

³¹ “Third-Party Solicitations for Energy Efficiency Process Evaluation”, available at <https://pda.energydataweb.com/#!/documents/2581/view> (pg.29-30).

Questions:

- 6.2.1 For what purpose/uses do stakeholders (specify which stakeholders) find benefit from Implementers and utilities openly sharing data?
- 6.2.2 Should the CPUC require PAs to gather and release program data from ratepayer funded third-party solicited energy efficiency programs openly in a manner that would not undermine the Implementer's intellectual property (e.g., share the data after a certain amount of time)? If so, which data and at what level of detail? Are there legal requirements the CPUC has adopted that relate to this question?
- 6.2.3 What timelines are appropriate for disclosure of this third-party program data, consistent with law?
- 6.2.4 If non-incumbent bidders do not have access to the same data as incumbents, does this create an uneven playing field? Are there ways to level the playing field by making data accessible to non-incumbents? If so, at what level of detail, via what communication mechanism or platform for sharing information, and when should access to data be provided?

7 Transparency to the Bidder Community and Future Market Opportunities

7.1 Extending Contracts vs. Issuing Solicitations for New Competition

CPUC staff have asked IOUs whether unlimited extension of contracts beyond initial terms can hinder competition and prevent new program offerings in the same sector.³² CPUC staff have also requested that the IOUs provide more clarity to the third-party EE market around when

³² January 31, 2022 "EE 3P Solicitations Stakeholder Forum Meeting Minutes", available at <https://www.caeecc.org/cpuc-third-party-public-meetings> (pg. 2).

contracts will be extended or renewed and when they may be recompleted. Each IOU has in place a review process that considers program performance, portfolio goals/metrics, impacts to the customers served by the program, and changing portfolio needs.³³ PG&E, SCG, and SCE do not have any internal set limits on length or number of extensions to a contract and evaluate the decision to re-solicit on a case-by-case basis. SCE has stated a primary plan to solicit new program designs. SDG&E plans to do a market scan every five years, and is the only IOU which has a standard two-year maximum limit on contract extensions.

If a program is performing well, a hard limit to extensions could cause unnecessary solicitation process burden for both the IOU and Implementer or market uncertainty. However, maximum IOU flexibility could result in long-entrenched programs which have a powerful incumbent advantage and limited opportunities for more innovative bidders.

Questions:

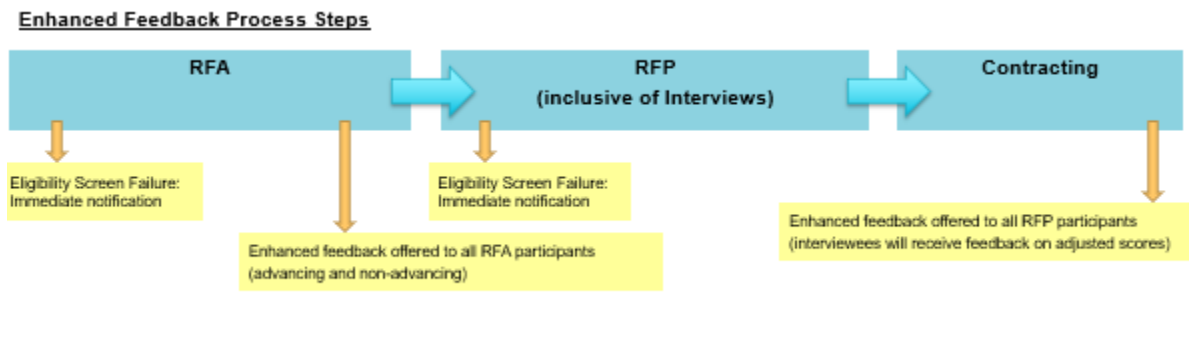
- 7.1.1 Should there be CPUC direction or criteria for third-party contract renewals and what should be the guiding rules? E.g. should there be a limit on contract extensions or a CPUC approval process for extensions?
- 7.1.2 Should there be CPUC requirements around the frequency by which new competitive solicitations are held in specific segments or sectors?

7.2 Feedback to Bidders at Each Solicitation Stage

IOUs providing feedback to bidders can be significant to improving future bids and enhancing competition. Each IOU has created standard bidder feedback mechanisms that typically give immediate notification of failure to advance and an offer for enhanced feedback for all RFA

³³ January 31, 2022 “EE 3P Solicitations Stakeholder Forum Presentations”, available at <https://www.caecc.org/cpuc-third-party-public-meetings> (slides 18,22,26,31).

and RFP participants, followed by bidders sharing with the IOU if they found the feedback valuable and constructive. The feedback is typically given at a high level and scoring criteria and weights are not discussed, although relative scoring position has been provided. The graphic below shows a typical IOU process for bidder feedback touchpoints.



Guidelines established by the PRG state that IOUs should seek opportunities to provide useful feedback to bidders in two venues, both individually and in group feedback session open to all solicitation participants. The guidelines specify that bidders notified that they did not advance to the subsequent stage should receive individual, bidder-specific feedback, within two weeks of receiving a request; and that group feedback is offered within 1-2 months of approving contracts. These guidelines are suggested procedures to the IOUs, not requirements.

Questions:

- 7.2.1 Is a PRG guideline to IOUs on the timing of feedback to bidders sufficient to ensure bidders receive feedback or should the CPUC require more granular feedback requirements in a decision?
- 7.2.2 If the CPUC should add more requirements, what should they be? Specify what the appropriate level of detail a bidder should receive in feedback sessions (whether voluntarily offered or required) is?

7.3 Independent Evaluator Reports and Advice Letter Content

Confidentiality Declaration

D.18-01-004, Conclusion of Law 15, states that “IEs should be required to...file semi-annual reports to the Commission in the applicable energy efficiency rulemaking, detailing observations about the solicitation process...”³⁴ This decision also requires IOUs to submit advice letters for Energy Division approval of contracts with a value greater than \$5 million, or 3 years in length. Both of these requirements support transparency into the third-party process and allow 1) potential bidders confidence in a fair process and 2) Implementers of other existing programs to understand those programs about to enter the market and flag potential overlap or conflicts. CPUC staff have identified and worked to address instances that IOUs have heavily redacted information they declared as confidential from IEs’ semi-annual reports. CPUC staff have also received stakeholder protests to advice letters and heard stakeholder concerns at semi-annual workshops against IOUs’ masking of content as confidential.³⁵ It may be reasonable for IOUs’ RFA materials as well as the RFP package to the bidders to contain a commitment by the IOUs to protect bidders’ confidential and proprietary information in order to encourage the potential program implementers to provide as much information as possible to allow for a full evaluation of each bid. It is possible that IOUs have also made agreements with the contracted entity to not disclose information, and thus IOUs masked the information to honor the contract they agreed to with the selected program implementer.

Much of the third-party process for energy efficiency in D.18-01-004 was modeled after the process for IOUs’ procurement of supply-side resources. However, there is an important difference for energy efficiency third-party solicitation process as it relates to confidentiality –namely, that information on the solicitations is to be developed by the IEs and posted publicly while a solicitation is still underway (i.e., selections are not yet made and contract negotiations are not complete).

³⁴ D.18-01-004 “Decision Addressing Third Party Solicitation Process for Energy Efficiency Programs”, available at <https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M205/K560/205560586.PDF>, (pg.58).

³⁵ “July 28, 2021 EE 3P Solicitations Stakeholder Forum Meeting Minutes”, available at <https://www.caeccc.org/cpuc-third-party-public-meetings> (pg. 3).

Solicitations still in progress require stricter confidentiality requirements so as not to put the bidder with whom the utility is negotiating, as well as the utility itself, at a competitive disadvantage.

The necessary staff time from both IOUs and the CPUC on the matter of IOUs compliance, or lack there-of, with GO 96-B Sec. 10, and GO 66-D Section 5.5 (when a confidentiality claim has been protested, a circumstance where it supersedes GO 96-B) could be burdensome and result in an unsatisfactory outcomes.

In order to avoid burdens to an IOU in appropriately declaring information as confidential, GO 66-D contemplates that a “Preemptive Determination of Confidentiality,” would reduce the burden on individual information submitters. There are two methods by which the CPUC can make such preemptive determinations of confidentiality: 1) in any proceeding in which the CPUC issues a decision requiring the submission of information, the CPUC may make a determination of whether the information required by the decision will be treated as public or confidential (GO 66-D section 3.4(b)); or 2) adopt confidentiality matrices which preemptively designate broad categories of information as confidential or public in a decision (GO 66-D section 3.4(a)).

Proposal:

CPUC staff propose to adopt the following confidentiality matrix to be appropriate to energy efficiency procurement contracts and the energy efficiency solicitation process by adding to the confidentiality matrix for supply side electric procurement located at D.06-06-066 Appendix 1.³⁶ For marking data and information from energy efficiency procurement solicitation process and contracts IOUs should follow the EE confidentiality matrix below and the existing confidentiality matrix located in D.06-06-006 Appendix 1.

³⁶ D.06-06-066 “Interim Opinion Implementing Senate Bill No. 1488, Relating To Confidentiality Of Electric Procurement Data Submitted To The Commission, Appendix 1 Order Instituting Rulemaking (OIR) 05-06-040 Matrix of Allowed Confidential Treatment Investor Owned Utility (IOU) Data”, available at: https://docs.cpuc.ca.gov/PublishedDocs/WORD_PDF/FINAL_DECISION/57774.PDF.

Matrix of Allowed Confidential Treatment Investor Owned Utility (IOU) Data		
Item	Public/Confidential Treatment ³⁷	Explanation of Item
I. Energy Efficiency Contracts Between Utilities (Gas and Electric) and Non-Affiliated Third Parties: Includes contracts for all budgets and durations (greater or less than \$5M and three years in duration).	Public: Contract summaries	Contract summaries include counterparty, contract budget, length of contract, timing, Diverse Business Enterprise spend targets and all content of Table A in Appendix 1
	Confidential for limited period: three years, or until one year following original contract duration expiration, whichever comes first.	All elements (Master Services Agreement; Terms and Conditions; Amendments; Purchase Orders; Work Orders; Contractor's Work Assignments Statement of Work, etc) and language of legal contract between the IOU and other parties (including affiliates of the IOU) to achieve demand side savings. The contract information includes the savings (all metrics for savings used in CPUC established energy efficiency goals), timing, and pricing terms of the contracts. Other terms include, e.g. payment terms (compensation to implementer).
II. Competitive Solicitation (Bidding) Information – Energy Efficiency		
A) Bid Information	Public after final contracts submitted to CPUC for approval.	Name of IOU, stage of solicitation (RFA or RFP), solicitation name, Total number of projects and savings (megawatts; kilowatt-hours; therms; total system benefit); by end use sector (e.g. residential, commercial, industrial, agricultural, public sectors, etc.),
	Confidential for limited period: Confidential for three years, or until one year following original contract duration expiration, whichever comes first.	Participating bidder's name, counter-party names, sub-contractor names, brief description of bid, targeted market sector, contract budget amount, contract expected energy savings, contract duration, size of bidder's firm, whether the bidder is new to energy efficiency solicitations, whether the bidder is a Diverse Business Enterprise, customer segment, description of bid's innovation, and other quantities offered in bids (See Table A in Appendix 1).
B) Specific Quantitative Analysis Involved in Scoring and Evaluation of Participating Bids	Public	Evaluation criteria and weights
	Confidential	Other information includes scoring of bids per evaluation guidelines criteria at each phase of solicitation (e.g. scoring of responses to a) request for abstract, b) request for proposal, c) interviews.

³⁷ Unless otherwise indicated, the “Public/Confidential Treatment” determinations for each item in the matrix covers data for that item for all time periods (annual, quarterly, monthly, daily etc.).

<p>C) Solicitation Event Schedule</p>	<p>Public</p>	<p>Includes all applicable events in the solicitation schedule such as: Request for Abstract (RFA) issued; Pre-Bid Conference; Bidder’s deadline to submit written questions; IOU response due to bidder questions; Bidder’s abstract submission due; Shortlist notification; Bidder feedback sessions offered; Request for Proposal (RFP) issued; Pre-Bid Conference; Bidder’s deadline to submit questions to IOU; Bidder’s deadline to submit Cost Effectiveness Test to IOU for preliminary review; IOU responses due to bidder questions; IOU responses due to preliminary Cost Effectiveness Test review; Bidder’s proposal submission due; Bidder interviews conducted by IOU; Bidder shortlist notification; Bidder feedback sessions offered; Contract negotiations and execution; Tier 2 Advice Letter submission.</p>
<p>D) Independent Evaluator Reports</p>	<p>Public</p>	<p>Independent Evaluator findings and recommendations that do not disclose information specific to individual bids (for example findings and recommendations related to IOUs’ 1) strategy and scope of work for third party solicitation among overall IOU administered portfolio, 2) clarity, simplicity, and design of requests for abstract and proposals 3) solicitation process, 4) marketing and outreach,</p>
	<p>Public after final contracts submitted to CPUC for approval.</p>	<p>All Independent Evaluator findings and recommendations. Includes additional bidder specific elements such as Independent Evaluator reaction to IOUs transition plan between existing and future implementer.</p>
<p>III. Strategic Procurement Information – Energy Efficiency Procurement</p>		
<p>A) Utility Solicitation Strategy and Portfolio of Third Party Contracts</p>	<p>Public</p>	<p>Explanation and evidence of how solicitations are in conformance with the strategies in the utility’s energy efficiency business plan and how the contracts will contribute to an overall cost-effective energy efficiency portfolio, noting any programs that offer innovative program design or delivery. Includes, specifically, the following: (1) how the contract or suite of contracts will contribute to meeting the utility’s target for third party programs; (2) whether or how the contract or suite of contracts will contribute to the utility’s energy savings/total system benefits goals, and; (3) whether the contract or suite of contracts is within the budget established by the CPUC.</p>
<p>B) IOU Solicitation Process and Marketing and Outreach</p>	<p>Public</p>	<p>Solicitation Process includes: a) information on Bidders access to solicitation documents and timelines used; b) Communications with solicitation respondents (bidders), including overarching questions from bidders and responses provided; c) selection and training of bid evaluators, including calibration sessions to ensure fairness c) Independent Evaluator participation in the process, including a summary of</p>

	<p>recommendations and input they provided, and marketing and outreach strategy includes: a) explanation of marketing and outreach to bidders to increase participation; b) training and workshops that were provided to interested bidders; c) efforts to increase bidder awareness of the process and the tools/platforms used to communicate solicitation opportunity.</p>
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Questions:

- 7.3.1 Do parties agree that CPUC adopting an Energy Efficiency procurement specific confidentiality matrix is a prudent action that simultaneously a) assures transparency on information appropriate for public consumption and b) mitigates burden related to the process of determining, declaring, and challenging confidentiality claims? Are there instances from the past that affect your response; if so, describe them.
- 7.3.2 What additions, deletions, modifications to the confidentiality matrix, as proposed here for energy efficiency, do parties suggest?
- 7.3.3 Should IOUs and Implementers be permitted to make a bilateral agreement to not disclose information? What, if any, legal basis exists that such an agreement could or would take precedent over a CPUC adopted confidentiality matrix to specify when data shall be publicly disclosed?

8 Other Improvements to Solicitations and Third Party Program Processes

8.1 Addressing Waning Participation from PRG Members

D.18-01-004 recognized the value of PRG participation for providing oversight, transparency, and timely feedback in the solicitations process. The CPUC encouraged participation from parties representing diverse stakeholder interests who are not financially interested in the solicitation results

and approved intervenor compensation (Conclusion of Law 11). Participation is voluntary and parties may face resource constraints and other barriers to active participation that may have led to an overall decrease in active participation from members on the PRG, aside from the Energy Division and Cal Advocates staff. In recent months, the PRG has included only one active outside stakeholder. Proposals for increasing participation include: (1) modifying or finding alternates to the intervenor compensation mechanism for PRG members and (2) amending the strict use of the definition for “Non-Financially Interested Parties”.

D.05-01-055 provided the definition of a financially interested party which is used in PRG materials:

“A financially interested party is any person who engages in the purchase, sale or be marketing of energy efficiency products or services, or who is employed by a private, municipal, state or federal entity that engages in the purchase, sale or marketing of energy efficiency products or services, or who provides consulting services regarding the purchase, sale or marketing of energy efficiency products or services, or an employee of a trade association comprised of entities that engage in the purchase, sale or marketing or energy efficiency products or services”.³⁸

Using this definition in evaluating if PRG members have a conflict of interest can result in a PRG member being removed from participating in all solicitations due to their affiliation with a single bidder respondent to a single solicitation. Staff seeks a resolution where the definition effects PRG member participation in deliberations on individual contracts and/or solicitations where the member has a conflict of interest, rather than a global prohibition to serving as a PRG member on any energy efficiency solicitation.

D.18-01-004 established that PRG members are eligible for intervenor compensation.³⁹ The California Public Utilities Code allows qualified parties in proceedings before the CPUC to request

³⁸ D.05-01-055 “Interim Opinion on the Administrative Structure for Energy Efficiency: Threshold Issues”, available at https://docs.cpuc.ca.gov/PublishedDocs/WORD_PDF/FINAL_DECISION/43628.PDF, (pg.103-104).

³⁹ D.18-01-004 “Decision Addressing Third Party Solicitation Process for Energy Efficiency Programs”, available at <https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M205/K560/205560586.PDF>, (pg. 57).

this compensation for their active participation. The program is intended to ensure that individuals and groups that represent utility customers have the financial resources to represent their concerns and interests to the CPUC. However, PRG members have stated that this process is cumbersome and may be a disincentive to more active participation.

Questions:

- 8.1.1 Are there alternatives to intervenor compensation that would allow individual experts to participate and receive compensation for serving on the PRG? What is the legal basis for such alternatives? Would using such alternatives affect others' access to intervenor compensation?
- 8.1.2 Should the definition of financially interested party be amended for purposes of the third-party solicitations process to allow experts that have no real conflict to take part in PRGs or recuse themselves from individual solicitations where a perceived conflict of interest exists? If so, provide specific amendments to the definition? Does such change require any change to statute or the CPUC's rules?
- 8.1.3 Does waning PRG participation negatively impact the solicitations process in a way that is not mitigated by other oversight mechanisms (e.g., IEs and their semi-annual reports)? If so, should more active PRG participation by external parties be encouraged by the IOUs or the CPUC? How?

8.2 Amend How Portfolio Costs are Categorized as Third-Party Solicitation vs. In-House Designed/Budgeted

Parties and the IOUs have identified inconsistencies and gaps in guidance around how to categorize third-party solicitation administration costs. Specifically, IOUs differently book these costs among categories such as administration costs; direct implementation non-incentive costs; and marketing and outreach costs, plus further subdivisions of these categories, depending on whether the cost is supporting portfolio administration or program administration.

A consistent method across IOUs for accounting third-party administration costs among different cost categories may be helpful:

- because assigning third-party administration costs among cost categories matters, for example, for purposes of calculating third-party and statewide program total resource cost
- to assure administrative costs are not duplicative, (e.g., amongst a third-party implementer's administrative work and IOU's administrative work).

CPUC staff tasked the Project Coordination Group (PCG) to address these discrepancies and develop a joint proposal by July 2022. Some IOUs are seeking CPUC direction via their business plan applications. It may be appropriate for IOUs to follow consistent accounting methodology for third-party administration costs sooner than a decision on business plan applications is issued.

Questions:

- 8.2.1 Should the IOUs use a consistent method for accounting third-party administration costs among cost categories? Justify your response.
- 8.2.2 May or should the CPUC delegate establishing consistent accounting methodology for third-party administration costs to staff? Is such delegation lawful?
- 8.2.3 If so, what principles or boundaries should a CPUC decision set for staff to adhere to?
- 8.2.4 If not, what direction at what level of detail should a CPUC decision provide to assure consistent accounting methodology is used by all IOUs for third party administration costs?

8.3 Purpose and Frequency of Third-Party Solicitation Process Workshop

D.18-01-004 Conclusion of Law states that “Commission staff, separately or in coordination with the CAEECC, should host semi-annual workshops after the first solicitation launch and through the end of 2022, to allow for informal discussion and problem-solving among stakeholders about the progress of the third-party solicitations and for consideration of the semi-annual IE reports.” Given the process of the third-party solicitation has been operational for over four years,

with discussions and problem-solving through the eight CPUC staff hosted workshops, CPUC staff seeks stakeholder feedback on the purpose and frequency of third-party solicitation process workshop going forward.

Questions:

8.3.1 After 2022 should workshops with stakeholders continue, and if so, at what frequency?

8.3.2 What purpose and scope of workshops would continue to serve value?

8.4 Call for Other Issues from Stakeholder Community to Address in This Ruling

Question:

8.4.1 What are other issues relevant to the third-party solicitations process are critical to address at this time through a CPUC decision?

APPENDIX 1

Table A: General Contract Summary – Contract Name		
<u>1</u>	<u>Solicitation name</u>	
<u>2</u>	<u>Type of program: local, regional or statewide</u>	
<u>3</u>	<u>Delivery Type – specify the delivery type (i.e., direct install, upstream, midstream, or downstream)</u>	
<u>3.1</u>	<u>Direct Install/Downstream Customer Targeting (Yes or No)</u>	
<u>3.2</u>	<u>Customer Targeting brief description, if applicable</u>	
<u>3.3</u>	<u>Midstream/Upstream Market Actors receiving incentives (i.e., manufacturers, distributors, contractors, or other (specify).</u>	
<u>4</u>	<u>Market/Sector(s)</u>	
<u>5</u>	<u>Customer Segment(s)</u>	
<u>6</u>	<u>Third-Party Implementer/Subcontractor name</u>	
<u>7</u>	<u>Name of program or service</u>	
<u>8</u>	<u>Brief description of program or service (2-3 sentences)</u>	
<u>9</u>	<u>Total kWh Energy Savings (First year, net)</u>	
<u>10</u>	<u>Total MW Energy Savings (First year, net)</u>	
<u>11</u>	<u>Total therms Energy Savings (First year, net)</u>	
<u>12</u>	<u>Hard to Reach (HTR) Customers⁺. Provide forecasted total number of HTR customer accounts (by customer segment) receiving program and total savings (net first year kWh, kW, and therms) to HTR customers from program over all years program in effect</u>	e.g. 2,010 residential HTR customers, 20,000 kWh, 100 KW, 2000 therms for PY 2021 and 2022
<u>13</u>	<u>Disadvantaged Community (DAC)²Customers. Provide forecasted total number of DAC customer accounts (by customer segment) receiving program and total savings (net first year kWh, kW, and therms) to DAC customers from program over all years program in effect</u>	e.g. 40 commercial DAC customers, 10,000 kWh, 750 KW, 1500 therms for PY 2021,2022, 2023; 150 residential DAC customers 300 kWh, 20 KW, 400 therms for PY 2021, 2022, 2023
<u>14</u>	<u>Forecasted Number of Customers Served by Program Year</u>	
<u>15</u>	<u>Area(s) Served (including service territory, climate zones, cities, and/or counties, as applicable)</u>	e.g. “PG&E service territory, CZ 3 and 12” or “SCE service territory, all climate zones” or “Ventura County” or “City of Los Angeles”

16	<u>Program TRC ratio (CET output)</u>	
17	<u>Program PAC ratio (CET output)</u>	
18	<u>Program \$/kWh (TRC levelized cost, CET output)</u>	
19	<u>Program \$/kWh (PAC levelized cost, CET output)</u>	
20	<u>Program \$/MW (TRC levelized cost, CET output)</u>	
21	<u>Program \$/MW (PAC levelized cost, CET output)</u>	
22	<u>Program \$/therm (TRC levelized cost, CET output)</u>	
23	<u>Program \$/kWh (PAC levelized cost, CET output)</u>	
24	<u>Budget: Forecast budget by program year (PY) for each year contract in effect</u>	e.g. \$500,000 (PY2020), \$1.2 million (PY2021), etc.
25	<u>Budget: Forecast expenditures by program year (PY) for each year contract in effect</u>	e.g. \$400,000 (PY2020), \$1.3 million (PY2021), etc.
26	<u>Budget: Total Program Budget (include explanation for difference, if any, from total contract budget provided in Table A)</u>	
27	<u>Budget: If EE/DR component to the program, provide dollar amount and percent of total budget dedicated to EE/DR component</u>	e.g. \$EE-DR project budget/\$Total Budget = xx%
28	<u>Measure(s)</u>	
29	<u>Savings Determination Type (i.e. custom, deemed, Net Metered Energy Consumption, or Randomized Control Trial)</u>	
30	<u>Savings Calculation Method(s) (Meter-Based, Deemed, Calculated, Multiple and/or Other) If Multiple or Other, please specify</u>	
31	<u>Contract start date and end date</u>	e.g. MM/DD/YYYY – MM/DD/YYYY
32	<u>Program start date and end date. If program dates aren't defined by the period the program is open for customer participation, explain, and also include customer participation period.</u>	e.g. MM/DD/YYYY – MM/DD/YYYY

(End of Attachment A)