

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Application of Southern California Edison
Company (U 338E) for Approval of Energy
Efficiency Rolling Portfolio Business Plan.

Application 17-01-013
(Filed January 17, 2017)

And Related Matters.

Application 17-01-014
Application 17-01-015
Application 17-01-016
Application 17-01-017

**RESPONSE OF THE OFFICE OF RATEPAYER ADVOCATES
TO THE REQUEST FOR COMPREHENSIVE SOLICITATION
PROCESS PROPOSALS**

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August 4, 2017

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Pursuant to the Scoping Memo and Ruling of Assigned Commissioner and Administrative Law Judges (Scoping Ruling), issued on April 14, 2017, and the Administrative Law Judges' Ruling Modifying Schedule, issued on June 9, 2017, the Office of Ratepayer Advocates (ORA) files this response to the Scoping Ruling's request for comprehensive solicitation process proposals. The Scoping Ruling required energy efficiency (EE) program administrators to file comprehensive solicitation process proposals and invited other parties to submit their own proposals.

Decision (D.) 16-08-019 outlined significant changes in the way the Investor Owned Utilities (IOUs) and other EE Program Administrators (PAs) procure EE programs, including new definitions of statewide and third party programs and a new requirement that the IOUs utilize competitive solicitations to procure third party EE programs for most of their portfolios. ORA proposes a solicitation process that advances the Commission's EE procurement goals, safeguards the prudent use of ratepayer funds, and provides the Commission and stakeholders with sufficient transparency to ensure

meaningful oversight of the procurement process. ORA's comprehensive solicitation process proposal is contained in Appendix 1, attached hereto.

ORA appreciates the opportunity to submit this comprehensive solicitation process proposal and respectfully requests that the Commission adopt the process and recommendations contained herein.

Respectfully submitted,

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Appendix 1

Comprehensive Solicitation Process Proposal

COMPREHENSIVE SOLICITATION PROCESS PROPOSAL

I. SOLICITATION PLANS

Consistent with the Commission’s determination in Decision (D) 16-08-019 that IOUs should “focus more on their role as determiners of ‘need’ and portfolio design, and less on their role as program designers and implementers,”¹ all of the IOUs – and some of the non-IOU PAs – have included solicitation plans and schedules as part of their business plans and supplemental filings in the consolidated business plan proceeding, Application (A.) 17-01-013 et al.

Solicitations plans serve several purposes, including facilitation of regulatory oversight, stakeholder transparency, and market signaling. In order to meet those needs, solicitation plans should, at a minimum, provide a roadmap detailing:

- Overarching procurement strategies and individual solicitation objectives;
- Need determinations and a description of how need was determined;
- Solicitation budgets and procurement targets;
- General criteria that will be used to evaluate potential bids;
- Expected schedules for upcoming solicitations; and
- Metrics and indicators that can be used to determine whether the solicitation plans are accomplishing their objectives.

As a procurement planning commitment, PAs should be required to submit solicitation plans as a part of their business plan applications for Commission approval. Any solicitation plans that the Commission finds deficient should be revised and submitted via a compliance filing following a final decision in the proceeding. In addition, PAs should provide regular updates on their progress in implementing their solicitation plans and any substantive changes to their solicitation plans and schedules in

¹ D.16-08-019, p. 71.

appropriate stakeholder forums such as California Energy Efficiency Coordinating Committee (CAEECC) meetings.²

II. REQUIRED SHOWING FOR UTILITY PERSONNEL PROGRAM ACTIVITIES

In D.16-08-019, the Commission required that going forward “all program design and delivery would be presumed to be conducted by third parties, unless the utility specifically made a case for why the program activity must be conducted by utility personnel.”³ In doing so, the Commission established a rebuttable presumption that all IOU EE programs would be conducted by non-utility personnel and required an affirmative showing on the part of the IOUs to justify any program activities for which they proposed to conduct.

Nevertheless, in their business plans, the IOUs fail to explain why customer acquisition activities must be conducted by utility personnel. Other program design and delivery activities that the IOUs propose to retain such as rebate processing, workpaper development, customer outreach, data analytics, and audit delivery are also core aspects of program design and delivery and should likewise be subject to the Commission’s rebuttable presumption. As such, ORA proposes two potential pathways that the IOUs can use to establish that they have met the Commission’s required showing for utility program activities: (1) competitive bidding and/or (2) utility program personnel justification narratives.

A. Competitive Bidding

Under this option, in order for an IOU to utilize IOU personnel for program activities, an IOU would submit a responsive bid in a competitive solicitation and be selected for contracting. This is the procedure that the Commission utilizes in power procurement to ensure that utility-owned generation assets do not receive favorable

² D.15-10-028, p. 73 provides that the coordinating committee should provide input into the development of business plans, implementation plans, annual budget advice letters, metrics, as well as any other issues the coordinating committee may wish to take on. ORA envisions updates on solicitation progress as a part of the process for providing meaningful input on deliverables the CAEECC is assigned to review.

³ D.16-08-019, p. 73.

treatment and that ratepayers are contracting only for least cost best fit resources regardless of ownership. The advantages of requiring the IOUs to compete with third parties in order to retain program activities are that (1) competitive bidding does not require an upfront determination of which activities the IOUs need to implement and therefore provides a level playing field for third parties to compete with IOUs in all aspects of program design and implementation and (2) competitive bidding produces greater transparency in IOU program costs and benefits through the bid submission process.

In order to be effective, competitive bidding involving the IOUs must be carefully overseen by stakeholders and the Commission. IOU bids would need to be scored utilizing the same criteria as competing third party bids and the scoring criteria and bid evaluations would need to be carefully scrutinized by external parties such as a Procurement Review Group (PRG) assisted by an Independent Evaluator (IE) in order to ensure fair competition and prevent conflicts of interest. In addition, winning IOU bids would need to be subject to similar terms and conditions such as strict pay-for-performance arrangements in order to safeguard against cost overruns on the part of the IOUs.

B. Utility Program Personnel Justification Narratives

Under this option, in order for an IOU to utilize IOU personnel for program activities, an IOU would submit a utility program personnel justification narrative for each program activity that it proposes to retain. Each narrative, at minimum, should describe concretely:

- The specific program activities the IOU proposes to use utility personnel to perform;
- Why the IOU proposes to use utility personnel for those specific program activities;
- The estimated annual cost for the program activities that will be performed by utility personnel, with clear per-unit costs, similar to what the IOU would require in a third party vendor contract;

- Whether the program activities are available in the market and the estimated cost for comparable services from non-utility vendors;
- How the utility will ensure that the use of utility personnel does not unreasonably constrain the program design and delivery of third party programs; and
- How ratepayers and customers will benefit from the use of utility personnel for program delivery instead of non-utility third parties.

In order to be effective and support meaningful oversight of IOU program activities, the Commission should require the IOUs to submit utility program personnel justification narratives for all program activities performed by utility personnel as exhibits in their business plans applications.⁴ After Commission approval of the business plans, updates to narratives – including new, revised, or withdrawn narratives – should be included as a part of annual budget advice letters. To ensure the utility program justification narratives do not result in IOU managed programs lacking spending discipline, the method for calculating the amounts that may be charged to the IOU’s EE balancing account for these programs must be defined up front, and whenever feasible, should be on a pay-for-performance basis.

III. PROCUREMENT REVIEW GROUPS AND INDEPENDENT EVALUATORS

In D.16-08-019, the Commission stated that it was “inclined favorably” toward “a ‘procurement style’ approach to selection of third-party programs, with use of procurement review groups and/or independent evaluators such as those employed in supply-side solicitations by electric utilities under Commission oversight.”⁵ The Commission also noted that the PRG/IE structure used in electric procurement “is

⁴ The Commission should consider the submission of utility program personnel justification narratives in a compliance filing following a final decision in this proceeding. In future business plan proceedings, the Commission should require the IOUs to file narratives as exhibits in order to afford parties an opportunity to conduct discovery and make recommendations to the Commission on whether the narratives are sufficient to meet the Commission’s rebuttable presumption.

⁵ D.16-08-019, p. 75.

designed for several purposes, including fair conduct of competitive solicitations and fair evaluation of bids.”⁶ The Commission therefore encouraged stakeholders to “bring forward a workable proposal to the Commission as part of the business plan in the rolling portfolio process.”⁷

ORA has worked with stakeholders over the past 18 months via the CAEECC to narrow differences and seek common ground on a procurement review process that is fair, transparent, and enables meaningful oversight of EE procurement. While some of the specific details of a preferred procurement process vary among the parties in this proceeding, in comments on the Scoping Ruling the vast majority of parties supported the same basic review process elements: (1) an advisory review group composed of Commission staff and non-financially interested stakeholders, (2) the use of an independent evaluator to assist stakeholder review, and (3) the goal of ensuring transparency, fair conduct of solicitations, and fair assessment of bids.⁸

A. Procurement Review Groups

For a review group, ORA proposes to use the existing supply-side Procurement Review Groups for the electric utilities and for SoCalGas to create a new Procurement Review Group along the same lines. The existing Procurement Review Groups have a set of regularized practices and regulatory infrastructure that have been developed and refined over the past 15 years for the specific purpose of ensuring fairness, transparency, and providing meaningful oversight in resource procurement.² Existing Procurement Review Groups have also been successful for a variety of resource procurements – including solicitations for third-party designed and implemented demand-side resources

⁶ *Ibid.*, p. 75.

⁷ *Ibid.*, p. 75.

⁸ PG&E Opening Comments, pp. 61-62; SCE Opening Comments, pp. 32-34; SDG&E Opening Comments, p. 20; CEDMC Opening Comments, p. 22-24; Coalition for Energy Efficiency Opening Comments, pp. 32-33; NAESCO Opening Comments, pp. 8-9; NRDC Opening Comments, pp. 12-15.

² See, for example, D.15-10-031, D.14-02-040, D.12-01-033, D.07-12-052, D.04-12-048, D.03-12-062, D.02-10-062, and D.02-08-071.

such as demand response¹⁰ – and can flexibly accommodate participation from EE stakeholders in their current format. Membership in the Procurement Review Groups is open to Commission staff and non-financially interested stakeholders willing to sign appropriate non-disclosure agreements, providing visibility into the procurement process for all stakeholders except those such as market participants that have a conflict of interest.

B. Independent Evaluators

In addition to the PRG, ORA proposes that the Commission require the use of Independent Evaluators drawing on the same selection process, responsibilities, and Commission oversight provisions as described in the Procurement Policy Manual.¹¹ The use of IEs ensures that all stakeholders and the Commission have access to an independent assessment of and reporting on the soundness of IOU bid evaluation criteria, Request for Proposals (RFP) or Request for Offers (RFO) language, and bid scoring processes and is vital for ensuring that stakeholders and Commission staff have the data and analysis they need to make informed recommendations to the IOUs and the Commission.

While ORA supports the use of the current IE infrastructure developed in electric procurement, ORA recommends that the Commission require that each IOU – with oversight from the PRG and Energy Division staff – run solicitations for new independent evaluators with specific experience relevant to the oversight of EE solicitations. Given the substantial number and size of EE solicitations that the IOUs will be required to run in the next several years, it is important that the IE pool include personnel with sufficient skills and experience in EE to effectively assess upcoming EE

¹⁰ For example, the existing PRGs review solicitations conducted as part of the Demand Response Auction Mechanism (DRAM) pilots, which solicit third party demand response resources. The contracts resulting from the DRAM are then submitted to the Commission for approval via advice letter.

¹¹ The Procurement Policy Manual is a staff-generated document that summarizes Commission policy and requirements for electric procurement, including a chapter specifically devoted to procurement oversight and PRG/IE requirements and procedures. Available at: www.cpuc.ca.gov/WorkArea/DownloadAsset.aspx?id=10906 (accessed 8/3/2017).

solicitations. While some IOUs may have IEs with limited experience evaluating EE bids in the context of all-source solicitations, most IEs currently utilized for the generation procurement processes will lack the EE-specific knowledge that will likely be required to perform the IE role across the wide range of sectors solicited and program designs proposed.

C. Contract Submission and Approval

In order to ensure that EE solicitations result in reasonable and prudent contracts for EE programs that are consistent with statute and Commission policy, the Commission should establish a mechanism for the IOUs to submit contracts for Commission approval. Contract submission supports the Commission's mandate to ensure just and reasonable rates and a fair and transparent solicitation process. It also provides stakeholders an opportunity to respond to or protest any contracts that are unreasonable or do not align with statute or Commission policy and propose appropriate remedies for Commission consideration. Because the PRG and IE are both advisory rather than decision-making entities, in the absence of contract submission PRG members and other stakeholders such as market participants would not be afforded an opportunity for fair hearing and adjudication of any concerns they raise with IOU solicitations and contracts, even in cases where the actions of an IOU were clearly unreasonable or violated Commission policy.

ORA proposes that as a standard procedure all contracts resulting from an individual RFP or RFO be submitted in a single Tier 2 advice letter for Commission consideration. Contract submission via advice letter is common practice for a variety of energy resource procurements –including procurement of third party demand-side

resources through the Demand Response Auction Mechanism –and a Tier 2 submission provides a reasonable balance between meaningful stakeholder review and timely disposition.¹²

ORA proposes that EE contract submission advice letters should, at a minimum, include the following:

- Descriptions the RFP/RFO selection process that resulted in the contracts;
- Descriptions of the programs selected for contracting;
- Summaries of the terms and conditions of the contracts;
- Costs estimates for each contract;
- Total cost recovery requested by the IOU; and
- A copy of the Independent Evaluator’s final report and recommendations.

In addition to a standard advice letter filing for each solicitation, the Commission may consider granting some flexibility to the IOUs to determine whether it is appropriate to submit individual contracts for approval in separate advice letters. This flexibility, for example, would allow an IOU to submit for approval a contract that had been identified in a PRG or an IE report as controversial separately from other contracts resulting from the same RFP/RFO and thereby speed approval of the non-controversial items.

¹² ORA recommends a Tier 2 advice letter as the appropriate classification for contract approval. A Tier 3 advice letter would automatically require a Commission resolution, which may not be needed for uncontested advice letters, while a Tier 1 advice letter that is ministerial and presumed to be approved upon submission would not be appropriate for advice letters requesting approval of contracts requiring substantial cost recovery authority.