# Purpose

This memo sets forth a proposal for revamping the current utility Peer Review Group (PRG) into a Program Administrator (PA) Energy Efficiency Procurement Review Group (EE-PRG). This group would use an independent evaluator to review and provide an opinion on whether the PA’s competitive bidding process was conducted properly and whether proposed procurement is in line with the approved Business Plan. This process would be separate from the CAEECC process to avoid conflict of interest concerns but could report progress to the CAEECC as needed. It will also be set up to align with other procurement review groups as appropriate and may need to be changed pending the competitive solicitation decision in R.14-10-003.

# Why

The current structure of the PRG was developed to ensure a fair and transparent bidding process but does not lend itself to an effective and meaningful oversight forum. Given the recent decision requiring the expansion of the third party portion of the portfolio from 20% to a minimum of 60% by the end of 2020,[[1]](#footnote-1) there has been strong interest in developing a more robust stakeholder participation process to aid in this transition as well as to provide “good governance” and transparency for the ongoing third party bidding process. In addition, it is anticipated that by adding an independent evaluator and establishing a set schedule for review, the process will be more efficient than it currently is with increased stakeholder buy-in avoiding unnecessary delays.

# Who

1. Energy Efficiency – Procurement Review Group (EE-PRG): Non-financially interested stakeholders (parties or otherwise) would be able to join the EE-PRG if they meet the (forthcoming) criteria.[[2]](#footnote-2)
2. The Independent Evaluator (IE): The IE would have significant experience in management, design of energy efficiency portfolios and programs, and experience managing third party procurement processes. Ideally there would be a pool of qualified IEs from which the PAs can choose.
3. CPUC: The CPUC staff would participate and maintain current authority.
4. Public: The public would not be able to have access to these meetings, but could learn of high level progress through the CAEECC forum.

# What

This process would entail a set schedule of regular EE-PRG meetings to review solicitation plans, proposed solicitations, Request for Proposal (RFP) protocols and product criteria, offer evaluations, and final selection for third party programs (e.g., statewide or otherwise). The meeting schedule would be established in advance and be structured in such a way to minimize delays in the solicitation process while enabling sufficient opportunity for stakeholder involvement and Energy Division oversight.

The IE’s role would include the following:

1. Review the PA’s solicitation protocol and schedule to ensure consistency with the approved Business Plan, Commission guidance, and state policy. Such items to be reviewed include proposed budgets, prequalification requirements, , performance and EM&V requirements, target cost-effectiveness (e.g., TRC, levelized cost, etc.), criteria by which the solicitations will be evaluated, and each criterion’s respective weighting. The IE may also advise onprotocol language, and RFP distribution systems or lists to be used.
2. Review the PA’s solicitation results to ensure the solicitation was fair and competitive, evaluation methodologies were applied correctly, and the selection of a final bidder complied with protocols that were defined in (A)If discrepancies or issues emerged related to the PA’s final selection, the IE would describe how the issue was decided. Per the options below, if there is an Advice Letter filing, this report would be filed concurrently with the PA’s advice letter. If no Advice Letter is filed, it would be submitted to the EE-PRG and the Commission prior to contract execution.
3. Provide an annual written assessment to CPUC’s Energy Division and the EE-PRG of the results of the solicitation processes concluded within the past calendar year in a format to be defined by the CAEEC. The IE would also submit a report to the CPUC and EE-PRG recommending suggestions for improved enhancements to the solicitation process
4. Coordinate to a reasonable degree with Energy Division staff.

If approved, the revamped EE-PRG and IE (when available) should:

1. Establish a timeline such that this process would be ready to launch after the Commission decision on the business plans;
2. Determine a timeline of meetings post-launch; and
3. Outline meeting protocols.

# Process Proposal

1. **Hiring an IE**

As noted above, the IEs would need to have sufficient expertise in the area of energy efficiency program and policies, management in bidding processes, as well as with managing an extensive multi-stakeholder process.

* 1. Solicitation process for IE (regardless of who holds the contract): Those entities on the EE-PRG who would like to participate should be part of the solicitation and review process for the IE selection. Any participant on the selection committee would be disqualified from bidding as a potential IE.

The roles of the EE-PRG in the solicitation process for an IE would include developing the RFI language, including the scope of the position and description of the IE pool, criteria and weighting of each criterion, process, as well as reviewing the bids to enable an informed discussion of the scored results and proposed awardee.

* 1. Contracting: The following table outlines the two proposals discussed by the CAEECC ad hoc working group.

[see next page for contracting option table]

**Table 1: Contracting Options**

|  |  |  |
| --- | --- | --- |
| **Options** | **Pros** | **Cons** |
| IOU holds the contract and runs the solicitation process for the pool of IEs | * Speedier process. * Allows for checks and balances of the process (e.g., through EE-PRG involvement). * Allows for and ongoing role of the EE-PRG to oversee the balance of the IE (e.g., receive deliverables before they are final, approve timecards, etc.). | * It is some stakeholders’ view that an IE would not be truly independent if they were to be under contract to the IOU or if the IOU had a role in choosing the IE, despite having checks and balances in place. |
| Energy Division (ED) holds the contract | * The IOU would not hold the contract. | * The CA state contracting process takes an extensive amount of time. * There would not be an opportunity for an EE-PRG to be part of the selection process. * Uncertain if the EE-PRG would be able to be part of the reviewing the deliverables before they are final or other similar opportunities if the IOU is the contract holder. |

* 1. Contract length: TBD (e.g., would the individuals or firms be hired for X amount of years or throughout the Business Plan length, etc.).
  2. Funding source: The PAs will need approval of IE cost recovery in rates before funding an IE.

1. **Level of Review**

In the last version of this document, there were three proposals regarding what level of review the IE will have on the RFP and contracting process. The purpose of the RFP and contract review is to ensure compliance with existing Commission direction and consistency of the bids with the Business Plan. The first option was to review every single RFP and contract. The second option was to spot check the process. The third option was to review every RFP and spot check the contracts. After discussion of these options in the CAEECC ad hoc working group and additional input, the following two options are presented for discussion.

**Table 2: RFP, offers, and Contract Review Options**

|  |  |  |
| --- | --- | --- |
| **Options** | **Pros** | **Cons** |
| Review all RFPs, proposals, and draft contracts. | * Highest level of transparency. * Greatest level of certainty to IOUs and marketplace regarding contracts. | * Potentially extremely time consuming, in particular for contract review as the number of contracts could be quite large given the breadth of the needs. * Potentially extremely expensive given how many RFPs and contracts are likely to be needed to get to a minimum of 60% third party programs by the end of 2020. |
| Review all RFPs and spot check proposals and draft contracts. | * Potentially allows the process to roll out quicker, relieving concern by many that an IE would slow the process. * Allows for all RFPs (which is likely a manageable number) to be fully reviewed. * Spot checking contracts would allow the EE-PRG to see if there is a trend or concern before investing time in an extensive review approach. * Still enables opportunity to “gut check” the process, with the option of expanding the spot checking if there is an identified problem. | * Not as high a level of transparency. * Potential for contracts/RFPs to go through that are not in line with direction. * Depending on the number of RFPs, could still slow the initial bidding process down. * If not all contracts go through Advice Letters, could result in some contracts not being reviewed. |

1. **Approval of Proposals**

Currently, once the PAs go through the existing IOU-specific PRG,[[3]](#footnote-3) they are able to contract and proceed with program launch. The following three options are presented based on previous discussions: (1) all contracts go through an Advice Letter (AL) process (potentially utilizing different Tier ALs for different types of contracts), (2) only submit contracts that reach a certain agreed-upon threshold (e.g., level of risk, size of project, budget, etc.) or if there are any disagreements in the EE-PRG/IE review process, and (3) continue the current process.

The fundamental issue at hand is to provide an opportunity for EE-PRG members to raise concerns with a particular contract if/when the IE and EE-PRG members raised a concern in the informal process, but their input was not taken into consideration. This process is currently available in the Procurement Review group, providing the utilities with a clear sense of the potential challenges that will arise in a protest if not resolved ahead of the Advice Letter filing. It also allows the IOU to submit the contract for CPUC approval if it feels it can provide sufficient justification to address the protest.

The current PRG process currently has no formal recourse because contracts presented to the PRG are not subject to Commission approval. This could also create a time consuming process with a high degree of uncertainty if a party raises concerns with a specific contract and the CPUC wishes to investigate that contract for reasonableness, thereby delaying the process on an unknown timeline. To address these issues, below is a summary of the Pros and Cons of the options.

**Table 3: Contract Approval Process Option**

|  |  |  |
| --- | --- | --- |
| **Options** | **Pros** | **Cons** |
| All contracts go through an Advice Letter Process | * Provides an opportunity for stakeholders to raise concerns if the bids are not aligning with the business plans. * Stakeholder process should reduce party protests, or at least expedite the protest period (no need for extensive data requests). * CPUC approval reduces PA and implementer community uncertainty about contracts. | * Delay in launching programs, even if there are no protests (e.g., there is a 30 days comment period no matter what. Therefore, this approach would add 30 days minimum to the process). * Potential greater delay if Energy Division gets backlogged with ALs. * Potential added cost of contracting process and possible additional staff needed to process. |
| Only contracts that are in dispute after IE review/EE-PRG discussion or are above a certain threshold require an Advice Letter (e.g., time length or budget) | * Provides an opportunity for stakeholders to raise concerns if the bids are not aligning with the business plans for contracts above a certain threshold or disputed within the EE-PRG. * Stakeholder process should reduce party protests, or at least expedite the protest period (no need for extensive data requests). * CPUC approval reduces PA and implementer community uncertainty about contracts. * Requiring only disputed contracts or contracts above a certain threshold will help manage the time delays for contracts and reduce the burden on the Energy Division. * Narrowing the scope will reduce the overall cost of the IE/EE-PRG process. | * Some stakeholders would not be comfortable with only a portion of contracts being submitted, especially if the IE is only spot checking certain contracts (as noted above). |
| Existing process where contracts can move forward once PRG has reviewed | * Allows for speedier process | * No opportunity for commenting. * Creates market uncertainty for contracts that are contested by parties. |

1. **Draft order of operations**

**Table 4: Roles and Responsibilities**

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
|  | **Develop and review public RFP scope (pre-IE/EE-PRG process)** | **PRG/IE Reviews RFP** | **Launch solicitation** | **Review Proposals** | **Present final scoring** | **Contract negotiation and signature OR Advice Letter** |
| PA | Scope for RFP is pulled from the Business Plan to minimize duplication and becomes high level initial “IP.”  This initial information is presented to the appropriate CAEECC subcommittee. | PA incorporates any feedback from public review and develops the full RFP for IE/EE-PRG review.  Examples include:   * Full RFP scope language * Scoring criteria/weight * List for distributing RFPs (e.g., PEPMA, industry associations, others?) * Schedule commitment * Planned “Bidders Conference” | Once EE-PRG/IE review is complete and any incongruities resolved, PA launches the RFP and holds “Bidders Conference.” | PA receives proposals and scores them according to the scoring criteria. | PA presents selected offers to PRG/IE, including any justification for selection outside of strict scoring ranks. | Once review is complete and any items raised are resolved, PA negotiates a contract with the winning bidder.  OR if there are issues that cannot be resolved, contract is sent through as an AL. |
|  | **Develop and review public RFP scope** | **PRG/IE Reviews RFP** | **Launch solicitation** | **Review Proposals** | **Present final scoring** | **Contract negotiation and signature OR Advice Letter** |
| IE | n/a | Reviews the PA’s proposed scoring criteria, list of where RFPs will be posted or sent to, RFP schedule, planned “Bidders Conference.”  Ensures they are consistent with Commission policies, guidance, and the business plans. | n/a | IE determines whether the solicitation was conducted fairly and ensures scoring is consistent with criteria. | IE evaluates those offers not selected.  IE provides report and recs.  Report includes an analysis of the proposals and submits to EE-PRG: #, size of company, adherence to schedule and compliance with policies/BP, etc.; makes recs for improvements | IE summarizes aggregate results of contract negotiation process: How many make it from selection to final; how many hit the schedule; are there themes/issues that could be improved upon?  IE would also report on why some offers were selected and some were not. |
| EE-PRG | n/a | Reviews proposed RFP protocol and the recommendation of IE. Raises any issues or if none, the process moves along. | n/a | n/a | Either the EE-PRG brings up concerns based on IE report OR if no items of contention, the process continues. |  |

1. D.16-10-019 p.# [↑](#footnote-ref-1)
2. It will be necessary to ensure Intervenor Compensation direction is clear for participation in this process. [↑](#footnote-ref-2)
3. Policy Manual v.5 p.# [↑](#footnote-ref-3)