

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Application of Southern California Edison Company
(U338E) for Approval of Energy Efficiency Rolling
Portfolio Business Plan

and Related Matters

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

Application 17-01-014
Application 17-01-015
Application 17-01-016
Application 17-01-017
(Consolidated)

COALITION FOR ENERGY EFFICIENCY SOLICITATION PROCESS PROPOSALS

August 4, 2017

Thomas Enslow
Adams Broadwell Joseph and Cardozo
520 Capitol Mall, Suite 350
Sacramento, CA 95814
tenslow@adamsbroadwell.com

On behalf of the Coalition for Energy Efficiency

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Pursuant to the Scoping Memo and Ruling of Assigned Commissioner and Administrative Law Judges dated April 14, 2017 (“Scoping Memo”) and the Administrative Law Judges’ Ruling Modifying Schedule dated June 9, 2017, the Coalition for Energy Efficiency (“CEE”) provides the following proposals for the energy efficiency program solicitation process.

I. BID SOLICITATION REQUIREMENTS

A solicitation schedule should be adopted for each market segment. This schedule should include concrete metrics for request for proposal (“RFP”) launch dates, response dates, selection of awardees and contract signing dates. The schedule should include the savings reduction and market transformation goals for each segment, the number of target contracts per market segment, and the total expected budget for each segment.

The design and implementation components that should be developed prior to bids should be high level. However, they should require that bid respondents address consistency with State and Commission policy and that bid respondents describe how proposals align with relevant Business Plan goals, strategies and metrics.

More specifically, bid solicitations should require each bid proposal to:

- A. Describe which Legislative and CPUC policies and goals the proposal supports.
- B. Describe how the proposal aligns with goals to ensure that minority, low-income and disadvantaged communities are participants in the energy efficiency jobs created by the proposal, including any applicable workforce diversity and inclusion goals or applicable employment partnerships with state-certified apprenticeship programs,

community colleges or other organizations that have a proven track record of training and providing career opportunities to disadvantaged workers.

- C. Describe how the proposal ensures program energy efficiency measures are safely and properly installed by an adequately skilled and trained workforce.
- D. Identify the knowledge, skills and abilities needed to ensure proper installation of any energy efficiency measures proposed to be installed or incentivized under the proposed program.
- E. Identify any applicable workforce standards that may reduce the risk of lost energy savings from poor installation of energy efficiency measures, including any specific skills certification requirements and broader occupational training and experience requirements (such as journeymen and apprenticeship requirements) or other recommendations set forth in the 2014 University of California, Berkeley, Donald Vial Center for Employment in the Green Economy (UCB-DVC) report, “*Workforce Issues and Energy Efficiency Programs: A Plan for California’s Utilities.*”
- F. If workforce standards are not required under the proposal, justify why no such standards are adopted.
- G. Describe how the proposed program will ensure program energy efficiency measures comply permit and code requirements.
- H. If meter-based M&V is not required, explain and justify why not. CEE notes that these program proposal requirements should not be limited to just third-party proposals that are solicited by bids, but should also be required for any incentive programs proposed by an IOU or other Program Administrator.

II. ROLE OF INDEPENDENT EVALUATOR AND PEER REVIEW GROUP

Review of the PAs’ competitive bidding process by Peer Review Groups (“PRGs”) and Independent Evaluators (“IEs”) needs to be an essential element of the new energy efficiency portfolio structure adopted by the Commission. This is especially true in light of the increased amount of portfolio bidding ordered by the Commission. If bidding is not done right, the decision to order a significant increase in the number of third party programs could backfire and prove a barrier to meeting Commission and legislative goals.

Solicitation plans must allow for adequate IE and PRG review to ensure that: (1) the RFPs reflect State and Commission policies and Business Plan goals before the RFPs are

released; (2) the RFP solicitation and bid evaluation process is reasonable and meets the Commission's approved bidding metrics; and (3) the bid selection outcomes reflected a fair, informed assessment of responses, free of biases. Included in this review should be a determination of whether the bids address EM&V goals, workforce quality goals, and workforce diversity and inclusion goals.

The rolling portfolio guidance Decision expressly encourages a solicitation process that includes procurement review groups and/or independent evaluators.¹ Moreover, the Energy Division is already authorized to hire an Independent Evaluator. Decision 05-01-055 authorizes the Energy Division, as Chair of the PRG, to hire an independent consultant to be paid for out of energy efficiency program funds.² The IE should work in conjunction with the PRG whose advisory role is described in Decision 05-01-055. Having a dedicated IE responsible for reviewing all portfolio bidding will result in much better oversight than review only by the PRG and CPUC staff, neither of which have sufficient time or resources to meaningfully review and evaluate all portfolio bidding and contracting processes.

The IE should perform the following functions, in conjunction with the PRG whose advisory role is described in Decision 05-01-055:

1. Review how PAs structure their bids to ensure consistency with Commission guidance and State policy, including proposed budgets, prequalification requirements, scopes of work, performance and M&V requirements, target TRC and PAC, evaluation criteria and each criterion's respective weight, workforce quality and workforce diversity goals, and RFP distribution lists to be used.
2. Review the results of the PAs' evaluation processes (e.g., how many parties responded to each bid, what was the range of scoring results, disqualified respondents, etc.).
3. Assist the PRG in its assessment of the effectiveness of the PAs' portfolios.
4. Provide a written assessment to the Energy Division and the PRG of the RFP processes and results, with possible suggestions for future enhancements.
5. Prior to the signing of contracts, the PRG and IE should have opportunity to assess the consistency of proposed program-level metrics with the Business Plan-level goals and metrics.

¹ D.16-08-019 at p. 75.

² D. 05-01-055, page 105.

The IE should be required to have significant experience in management and design of energy efficiency portfolios and programs, as well as experience managing third party procurement processes. Supply-side evaluation requires a very different skill set from demand-side evaluation. This is one reason why there have always been separate supply side Procurement Review Groups and demand-side Peer Review Groups.

To ensure independence, the IE must report to, and be under contract with, *the Commission* for a term of at least three years. An evaluator cannot be independent of a company that pays that evaluator, even with input from other parties. An IE paid by an IOU would have a strong incentive not to provide a critical assessment of an IOU. Independence requires an arm's length relationship.

This potential conflict was expressly recognized by the Commission in the Commission's Decision 05-01-055, which required the use of truly independent EM&V consultants who also carry out an evaluation function. In Decision 05-01-055, the Commission rejected the IOU's proposal to allow EM&V consultants to be under contract to the IOUs because such a relationship would "seriously undermine the independence of these consultants."³ The Decision (adopting comments from TURN) stated:

EM&V must be as transparent and independent as possible to ensure that the best program designs are adopted and that the best program implementers are selected. An EM&V structure that does not completely shield EM&V studies from potential conflicts of interests undercuts California's ability to reach our energy savings potential.⁴

The Decision expressly rejected the idea that oversight by a stakeholder advisory group is sufficient to offset this loss of independence:

The EM&V administrative proposals presented by the IOUs Coalition, the NRDC/LIF Coalition and the Collaborating Parties [which would have the EM&V consultants under contract to the IOUs] fall short of ensuring the necessary independence of EM&V, in our judgment. Under the IOUs Coalition proposal, EM&V consultants are pre-approved as "independent" by the stakeholder EM&V advisory group, but as TURN points out, *they nonetheless lose independence by entering into a direct financial relationship with the entity whose work they are to evaluate.*⁵

³ D.05-01-055 at pp. 112-114.

⁴ D.05-01-055 at p. 113.

⁵ D.05-01-055 at p. 113 (emphasis added).

The concluded that:

In our view, allowing the entity that selects the programs and manages the portfolio (IOUs) or the program implementers (IOUs or non-IOUs) to manage or contract directly for EM&V of their own efforts *could seriously undermine the independence of even the most conscientious EM&V consultants.*⁶

The CEE opposes having IEs under contract to the PAs for the same reasons. Should it be necessary to have IEs initially under contract with PAs due to concerns over delay, (1) the PRG members should have a vote in deciding which IEs are chosen, and (2) the Commission should assume the contracts within a set time period so that IEs would not depend on the PAs for contract renewal.

The Commission should not approve the proposal made in several of the Business Plans to use the existing supply-side IEs and PRGs to oversee the energy efficiency program procurement process.⁷ The review of energy efficiency program bids requires a substantially different expertise than the review of supply-side bids. Moreover, the stakeholders qualified and interested in participating in the supply-side PRG are not necessarily the same as those interested or qualified in participating in an energy-efficiency PRG. Even where the same organization participates in both PRGs, it is unlikely it would use the same staff due to both workload and expertise limitations.

If a pool of IEs is necessary in order to avoid delay in the evaluation process, the IEs should be randomly assigned or assigned by the CPUC or PRG – rather than selected by the PA whose proposals are being evaluated. If the PAs are provided the right to select from a pool of IEs, the PAs would have a strong incentive to pick IEs who would be lenient in their investigations, analyses and assessments.

The PRG should include the Energy Division, ORA, and ratepayer, environmental, disadvantaged community, labor, and environmental justice representatives. Members of the PRG should not be allowed to bid programs to avoid potential conflicts of interest.

III. OTHER CONTRACTING REQUIREMENTS

In addition to IE and PRG review, all contracts should go through the advice letter process. The CEE objects to SDG&E's argument that advice letter approval process is not

⁶ D.05-01-055 at p. 114 (emphasis added).

⁷ See e.g., SCE Business Plan at p. 20; SDG&E Business Plan at pp. 11, 229.

necessary for approval of energy efficiency contracts since it will be overseen by PRG/IE process.⁸ The supply-side contracts are also overseen by a PRG/IE process and still require advice letter approval. Not all stakeholders have the resources or ability to be part of the PRG review process, accordingly a broader opportunity for public comment should be provided for each contract. This also ensures that no contracts slip through the cracks without an opportunity for Commission oversight. The advice letter process also provides the Commission final oversight over these contracts, which is necessary to protect ratepayer funds.

Energy Efficiency program contracts should be limited to 3 to 5 years in length, with a preference for three years with option to extend. Contracts greater than three years should have to justify the increased length. PAs should have the discretion to extend contracts rather than re-bidding them. However, this decision should require written justification and be subject to PRG and IE review and ED approval. Extensions should also be conditioned on amendment of contract terms if necessary to meet new Legislative or Commission guidance.

The end of a contract term, failure of a contractor to perform, or significant changes in market conditions should trigger re-bid requirements. A process should also be in place to modify contracts where modification is necessary to ensure consistency with subsequent Legislative or Commission guidance or requirements. PAs should have discretion to remove a poor performer, but should describe their process and reasoning to the PRG and IE prior to termination.

VII. CONCLUSION

The CEE appreciates the Commission's consideration of these proposals.

Dated: August 4, 2017

Respectfully submitted,

/s/

Thomas A. Enslow
Adams Broadwell Joseph and Cardozo
520 Capitol Mall, Suite 350
Sacramento, CA 95814
tenslow@adamsbroadwell.com
on behalf of the Coalition for Energy Efficiency

⁸ SDG&E Energy Efficiency Business Plan 2018-2025 at p. 229.