

December 14, 2016

Coalition for Energy Efficiency Independent Evaluator Proposal Comments

The Coalition for Energy Efficiency reiterates its comments on this issue that were presented in its consensus comments on the draft Business Plans and at the December 7, 2016 CAEECC meeting.

As stated in the Coalition's consensus comments on the draft Business Plans, the Coalition supports the concept of a truly independent, independent evaluator (IE). The use of an IE in reviewing the PAs' entire competitive bidding process should be an essential element of the improved energy efficiency portfolio structure adopted by the Commission. This is especially true in light of the increased amount of portfolio bidding ordered in the Decision and the switch to a rolling portfolio process. Under the rolling portfolio process, contracts may go on for 5 or 10 years without any additional review. It is critical that these bids are done right.

In these proceedings, the rolling portfolio guidance decision expressly encourages the development of a process that included procurement review groups and/or independent evaluators. It further called for the PAs to work with stakeholders to bring forward a workable proposal for such oversight as part of the business plans. (Guidance Decision D.16-08-019 at p. 75.) Moreover, the Energy Division is already authorized to hire an Independent Evaluator. D. 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 (D. 05-01-055, page 105).

The IE should work in conjunction with the Peer Review Group (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 D.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, 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.

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.

The Coalition disagrees with the proposal to allow the PAs directly contract with the IE and the proposal to allow the PAs to choose which IE it would like to evaluate its bidding process from a pool of IEs. 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: independence requires an arm's length relationship. An IE paid by an IOU would have a strong incentive not to provide a critical assessment of an IOU.

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 experience with a pool of IEs in the energy procurement process, underscores the need to ensure that the PAs do not get to choose the most favorable evaluator out of a pool of evaluators. A number of Coalition members have heard that certain energy procurement evaluators in that program were essentially shelved by the IOUs because they did not like their evaluations. While the Coalition has not independently confirmed the accuracy of this claim, it underscores the conflict that is inherent if IEs are chosen and paid by PAs.

Furthermore, 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. In D.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." (D.05-01-055 at pp. 112-114.) 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. (D.05-01-055 at p. 113.)

The decision then 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 (emphasis added).”
(D.05-01-055 at p. 113.)

The decision then concludes 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.
(D.05-01-055 at p. 114.)

The CAEECC should reject having IEs under contract to the PAs for the same reasons.

In addition to IE review, all contracts should go through the Advice Letter process. 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.

Submitted by:

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