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### **I. Purpose of Memo**

This memo is submitted in response to Decision 16-08-019 that invited a proposal for 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.”<sup>1</sup> While consensus was not met on a particular proposal, this document represents the discussion-to-date by an ad hoc California Energy Efficiency Coordinating Committee (CAEECC) working group as well as public comment from both CAEECC members and the public.<sup>2</sup>

The following sections outline various options as well as pros and cons for a Program Administrator (PA) Energy Efficiency Procurement Review Group (EE-PRG), whether it use existing supply-side PRG process or create a new group. In all scenarios, there would be an independent evaluator (IE) to review the PA’s competitive bidding process and provide an opinion to the EE-PRG on whether it was conducted in accordance with bidding protocols, CPUC policies, and the approved Business Plan (BP). This process would be separate from the CAEECC process to avoid conflict of interest concerns but could report progress to the CAEECC as needed. This review group should be set up to align with

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<sup>1</sup> D.16-08-019, p.75. In response to a proposal to use procurement review groups and/or independent evaluators: “We encourage stakeholders to continue to discuss these options and bring forward a workable proposal to the Commission as part of the business plans in the rolling portfolio process or the IDER proceeding, if one can be agreed upon.” and Conclusion of Law 63, p.106. “We should look favorably on proposals for peer review groups or independent evaluators in the context of third-party selection, but do not have enough record in this proceeding to adopt the structure. Ongoing work on these issues should occur in the integrated resource planning and/or IDER rulemakings.” As noted in COL 63, this proposal applies to the third party programs as defined by D.16-08-019 Ordering Paragraph 10, p.111. This could include statewide programs that are put out for bid in line with definition. However, it does not include those contracts needed for non-third party programs, such as professional services. In addition, this process should not apply to change orders that are within approved contract terms.

<sup>2</sup> The CAEECC ad hoc working group is made up of: ORA, CEEIC, NRDC, The Coalition for Energy Efficiency, PG&E, SCE, SCG, and SDG&E. A version of this document was discussed at a CAEECC meeting on 12-7-16 with verbal comments made by a number of CAEECC members. Written comments were submitted to the CAEECC facilitator by: ClearResult, the Joint Local Government CAEECC members, the Coalition for Energy Efficiency, the Joint IOUs, and CEEIC.

other procurement review groups as appropriate and may need to be changed given the recent competitive solicitation decision in R.14-10-003.

### II. Rationale for a Revamped EE-PRG and IE<sup>3</sup>

The current PRG was developed to ensure a fair and transparent bidding process but is not set up to enable effective and meaningful oversight to review numerous Request for Proposals (RFPs), third party program proposals, and awarded contracts to ensure they are in line with Commission direction or the approved Business Plans.

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,<sup>4</sup> there has been strong interest in developing a more robust stakeholder participation process to aid in this transition, ensure compliance with existing policies, and provide transparency for the ongoing third party bidding process.

In addition, some parties pose 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.

### III. Key Players Participating in a Third Party Solicitation Review

Regardless of which option outlined below is pursued by the Commission, the following actors would be involved in the process:

- A. Energy Efficiency – Procurement Review Group (EE-PRG): In addition to the relevant Program Administrator(s) and Energy Division, other participants include non-financially interested stakeholders (parties or otherwise) if they meet the (forthcoming) criteria.<sup>5</sup> Any participants of the EE-PRG would be ineligible to bid on any solicitation in which the EE-PRG is active.
- B. The Independent Evaluators (IEs): The IEs would be hired (see below for options) and have significant experience in managing third party procurement processes as well as in understanding energy efficiency portfolios and programs. Ideally there would be a pool of qualified IEs from which the CPUC or the EE-PRG could choose from for a solicitation review as is currently the

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<sup>3</sup> This group could be an extension of the existing supply-side PRG infrastructure or be developed as a separate established group. For the former, there would need to be an assessment of whether there are enough IEs within the existing pool and whether they would be qualified to conduct the activities needed for EE.

<sup>4</sup> D.16-10-019 p.111, Ordering Paragraph 12.

<sup>5</sup> It will be necessary to ensure Intervenor Compensation direction is clear for participation in this process.

- process with the supply-side procurement review group. The IEs would be responsible for reviewing the solicitation process (see below for more detail) and presenting their opinion to the EE-PRG regarding whether the process was compliant with Commission direction, stated bidding plans, and the approved Business Plans.
- C. CPUC: Energy Division would participate in the EE-PRG and maintain their current authority.
  - D. Public: The public would not have access to these meetings, but could learn of high level progress through the CAEECC forum.

#### **IV. Scope of the EE-PRG and IEs**

The current Procurement Review Group roles are set forth in D.02-08-071 from which the following activities are derived.<sup>6</sup> This process would entail a set schedule of regular EE-PRG meetings to discuss the IE review of solicitation plans, proposed solicitations, RFP protocols and product criteria, summaries of offers scoring, 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 balance the need for a timely solicitation process to enable continual energy efficiency program deployment while enabling sufficient opportunity for stakeholder involvement and Energy Division oversight.

The IE's role would include the following:

- A. Review the following items with the focus of ensuring consistency with the approved BP, Commission guidance (including the decision approving the Business Plans), and state policy. The review would not include

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<sup>6</sup> D.02-08-071 (p.24-25): "We will require each utility to establish a PUC-authorized "Procurement Review Group" whose members, subject to an appropriate non-disclosure agreement, would have the right to consult with and review the details of 1) each utility's overall interim procurement strategy; 2) proposed procurement contracts with the utilities before any of the contracts are submitted to the PUC for expedited review, and 3) proposed procurement processes including but not limited to "Requests For Offers" ("RFOs").... The PUC Energy Division and ORA staff would be ex officio members of each "Procurement Review Group," and membership of the "Procurement Review Group" would be open to an appropriate number of interested parties who are not "market participants"...who agree to execute an appropriate non-disclosure agreement and commit to review and make recommendations concerning proposed contracts and procurement processes on an expedited basis. Each "Procurement Review Group" would assess the procurement contracts and reasonableness criteria with each utility and offer assessments and recommendations to each utility and then to the PUC when the contracts and/or reasonableness criteria are submitted for expedited PUC review. The members of each "Procurement Review Group" would be committed to devote the time necessary to meet and confer with the utilities on each proposed contract and/or procurement process and provide written comments to the utilities within no later than 15 days of initiation of the review process."

programmatic assessment. Such items to be reviewed would be part of an agreed-upon checklist that the IE would use and include the following:

- a. PAs' solicitation protocol;
- b. Schedule;
- c. Proposed budgets;
- d. Prequalification requirements as appropriate;
- e. Scope of work;
- f. Performance and EM&V requirements;
- g. Target cost-effectiveness (e.g., TRC, levelized cost, etc.);
- h. Criteria by which the solicitations will be evaluated and each criterion's respective weighting;
- i. Protocol language; and
- j. RFP distribution systems or lists to be used.

As noted above, these items would be reviewed solely to ensure compliance with the stated solicitation strategies as put forth by the PAs' Business Plans as well as with relevant Commission direction. The IE role does not include review of program design or assessment of which design is preferred.

- B. Summarize and assess the PA's solicitation results to ensure the solicitation was fair and competitive, that planned evaluation methodologies for RFP review were applied correctly, and the selection of a final bidder complied with protocols that were defined in IV.A. If discrepancies or issues emerged related to the PA's final selection, the IE would identify the items and the process by which the ultimate decision was made. This information would be presented to Energy Division and the EE-PRG at the end of the solicitation process.
- C. Provide an annual written assessment to Energy Division and the EE-PRG of the overall results of the solicitation processes concluded within the past calendar year (e.g., how many parties responded to each bid, what was the range of scoring results, disqualified respondents, with possible suggestions for future enhancements and other information requested by the PRG.). The IE would also submit recommendations (if any) for improvements to the solicitation process. At the onset, this could be done quarterly to help inform improvements for the solicitation process.
- D. Coordinate to a reasonable degree with Energy Division staff by having Energy Division participate on the EE-PRG and review the IE reports and presentations.

The EE-PRG role would include the following:

- A. Review the PA's procurement strategy.<sup>7</sup>
- B. Provide timely input into the draft RFP language and criteria used for scoring.<sup>8</sup>
- C. Review presentations and annual assessments by the IE regarding process and whether the PAs complied with Commission direction, stated bidding plans, and the approved Business Plans.

### V. Process Options

#### A. 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 to develop a pool of IEs (whether the contract is held by CPUC/ORR or an IOU):<sup>9</sup> Those entities on the EE-PRG who would like to participate should be able to participate in the solicitation and review process for the selection of IEs. 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/RFP language (including the scope of the position), 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.

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

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<sup>7</sup> Note: This is currently being considered at the CAEECC to be open to the public through the CAEECC subcommittees if the information is high level enough to avoid conflict of interests. The procurement strategy review is intended to "refresh" stakeholders as to the strategy approved by the Business Plan as well as provide any supplemental information from updated analysis as appropriate.

<sup>8</sup> This is in line with current Peer Review Group roles per Policy Manual v.5 p.40: "Role of PRGs. As described in D.05-01-055 and D.07-10-032, members of each PRG will be expected to: (1) oversee the development of criteria and selection of government partnership programs, (2) review the IOUs' submittals to the Commission and assess the IOUs' overall portfolio plans, their plans for bidding out pieces of the portfolio per the minimum bidding requirement and (3) review the bid evaluation utilized by the IOUs and their application of that criteria in selecting third-party programs."

<sup>9</sup> Each IOU's Bundled Procurement Plan lays out the current process for retaining IEs.

**Table 1: Contracting Options**

Options	Pros	Cons
<p>1. IOU contracts with the IEs and runs the solicitation process for the pool of IEs</p>	<ul style="list-style-type: none"> <li>a. Speedier process.</li> <li>b. Allows for checks and balances of the process (e.g., the EE-PRG or CPUC manages the IEs, EE-PRG oversees the IEs' deliverables, and/or a subgroup of the EE-PRG could be part of the solicitation process, etc.).</li> <li>c. 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.).</li> </ul>	<ul style="list-style-type: none"> <li>a. Concerns that IEs 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 IEs, despite having checks and balances in place.</li> </ul>
<p>2. Energy Division (ED) or the Office of Ratepayer Advocates (ORA) contracts with the IEs and runs the solicitation process for the pool of IEs</p>	<ul style="list-style-type: none"> <li>a. Ensures an independent process.</li> </ul>	<ul style="list-style-type: none"> <li>a. The CA state contracting process could take an extensive amount of time.</li> <li>b. The CPUC does not currently have budget authority for such an activity, which would require a request to the legislature for authority. This would take at minimum a year from May 2017 when the request would likely be submitted (ED is looking into this further).</li> <li>c. There may not be an opportunity for an EE-PRG to be part of the selection process (ED would need to look into this further).</li> <li>d. Uncertain if the EE-PRG would be able to be part of the reviewing the deliverables before they are final etc. (ED would need to look into this further, but likely not an issue).</li> </ul>

3. Contract length: TBD (e.g., would the individuals or firms be hired for a certain amount of years or throughout the Business Plan length, etc.).
4. Funding source: The PAs will need approval of IE cost recovery in rates before funding an IE, whether the contract is held by the Commission or an IOU.

**B. Level of Review**

The purpose of the RFP, proposals, and contract review is to ensure compliance with existing Commission direction and the PA’s Business Plan. The discussion outlined below provides options for document review throughout the solicitation process. The challenge is to balance sufficient oversight with timely review while ensuring the budget for IEs is manageable.

Additional considerations not listed in the matrix include the option of reviewing only those documents above a certain threshold or scheduling a review of the process mid-year to assess its impact on the solicitation process and implementation of efficiency programs.

In addition, two outstanding questions include: (1) to what degree are the proposals reviewed? Would it be a full parallel scoring process to the IOU process? Or would the IE review the proposals to better assess if the IOU scoring results are reasonable? (2) What does spot checking mean? Would it be 50% of the proposals and contracts? Would it involve a sampling protocol (e.g., conduct a sampling and determine whether there is 90%+ confidence in that sample size. If not, the process could result in additional reviews)?

**Table 2: IE Compliance Review Options for RFPs, Proposals, and Contracts**

Options	Pros	Cons
1. Review all RFPs, proposals, and draft contracts.	<ol style="list-style-type: none"> <li>a. Highest level of transparency.</li> <li>b. Greatest level of certainty to stakeholders and the CPUC that the process is being reviewed at every stage.</li> </ol>	<ol style="list-style-type: none"> <li>a. Potentially extremely time consuming, in particular for proposal and contract review, as the number of proposals and contracts could be quite large given the breadth of the need.</li> <li>b. Greatest level of cost to the marketplace to get contracts in place given how many RFPs and contracts are likely to be needed to reach a minimum of 60% third party programs by the end of 2020.</li> <li>c. 100% duplicative of the solicitation processes and</li> </ol>

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		responsibilities already placed on the IOUs, and funded by customers, without a clear sense of the need for such an extensive process.
<b>Options</b>	<b>Pros</b>	<b>Cons</b>
2. Review all RFPs and spot check proposals and draft contracts.	<ul style="list-style-type: none"> <li>a. Potentially allows the process to roll out quicker, somewhat reducing the concern by many that an IE would slow the process.</li> <li>b. Less costly and time consuming than previous option.</li> <li>c. Spot checking (with further follow-up if needed) can act as an incentive to do it right, thus reducing the risk of contracts that are not compliant getting through.</li> <li>d. Allows for all RFPs (which is hopefully a manageable number) to be fully reviewed.</li> <li>e. Spot checking contracts would allow the IE and EE-PRG to see if there is a trend or concern before investing time in an extensive review approach.</li> <li>f. Provides confidence to stakeholders and the CPUC that the process is being monitored, enables opportunity to “gut check” the process, and there is the option of expanding the spot checking if there is an identified problem trend.</li> </ul>	<ul style="list-style-type: none"> <li>a. Not as high a level of transparency.</li> <li>b. Potential for contracts/RFPs to go through that are not in line with Commission direction.</li> <li>c. Depending on the number of RFPs, proposals, and contracts could still significantly slow the process down and require substantial time and money without a clear demonstration of the problem.</li> </ul>



### C. CPUC Approval of Contracts for Third Party Programs

**[much of this section updated w/o track changes by accident]**

Currently, once the PAs go through the existing IOU-specific PRG they are able to contract and proceed with program launch. The following three options were discussed as part of the ad hoc CAEECC working group: (1) all contracts go through an Advice Letter (AL) process (potentially utilizing different Tier ALs for different types of contracts), (2) submit only contracts meet a certain agreed-upon threshold (e.g., level of risk, size of project, budget, etc.) or have disagreements regarding compliance with policy within the EE-PRG/IE review process, and (3) continue the current process, which allows the PAs to contract without formal CPUC approval and allows stakeholders to raise concerns of non-compliance with the Commission through the current dispute resolution process.<sup>10</sup>

A few CAEECC members raised the proposal to submit all contracts through an AL process to ensure there is an opportunity for EE-PRG members or other parties to raise concerns with a particular contract as is the case in the current Procurement Review Group process.<sup>11</sup>

Additional items to consider: (1) reduce the protest period for Advice Letters without dispute, (2) provide an IE checklist of its assessment of the process to make it easier for ED to review the submitted contracts, (3) assure that if contracts are bundled to reduce the volume of ALs, one protest on one contract would not hold up the remaining contracts, (4) would need to ensure the ED staff person on the EE-PRG/IE would either review the ALs or work closely with the staff who is, (5) would need to ensure sufficient leeway for contract adjustments that happen periodically (e.g., due to changes in CPUC policy) without restarting the AL process, and (6) would need to identify what qualifies as dispute (e.g., non-consensus by one stakeholder, requirement for majority dispute, etc.).

The table below provides a summary of the pros and cons of the various options related to CPUC approval of awarded contracts.

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<sup>10</sup> D.15-10-028, p.65

<sup>11</sup> For contracts held by Local Governments, they propose using their existing processes in lieu of an additional AL submission to the CPUC.

**Table 3: Contract Approval Process Option**

Options	Pros	Cons
<p>1. All contracts go through an Advice Letter Process to monitor compliance</p>	<p>a. Provides an additional opportunity for stakeholders to raise concerns if the contracts are not aligning with the business plans.</p> <p>b. Stakeholder process should reduce party protests, or at least expedite the protest period (no need for extensive data requests).</p> <p>c. CPUC approval reduces PA uncertainty about compliance issues in contracts.</p>	<p>a. Delay in launching programs, even if there are no protests (e.g., there is a 30 days comment period no matter what).</p> <p>b. Administrative burden on both the IOUs and Energy Division (especially if the latter does not have sufficient resources to process the ALs)</p> <p>c. Potential greater delay if Energy Division gets backlogged with ALs.</p> <p>d. Potential added cost of contracting process and possible additional CPUC staff needed.</p> <p>e. Potential protests on issues not related to the compliance of the contracts with Commission policy or the Business Plans.</p> <p>f. Runs counter to the intent of the rolling portfolio – to simplify and move efficiency to the market in a timely manner.</p>
<p>2. Only contracts that are in dispute after IE review/EE-PRG discussion or are above a certain threshold require an Advice Letter</p>	<p>a. Provides an opportunity for stakeholders to raise additional concerns if the contracts are not aligning with the business plans for contracts above a certain threshold or disputed within the EE-PRG.</p> <p>b. Stakeholder process should</p>	<p>a. 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</p>

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<p>(e.g., time length or budget)</p>	<p>reduce party protests, or at least expedite the protest period (no need for extensive data requests).</p> <p>c. CPUC approval reduces PA uncertainty about contracts.</p> <p>d. Requiring only disputed contracts or contracts above a certain threshold will help manage the time delays for contracts and reduce the burden on ED.</p> <p>e. Narrowing the scope will reduce the overall cost of the IE/EE-PRG process.</p>	<p>above), which would mean it is possible that some contracts are not reviewed by the IE or Energy Division.</p> <p>b. Many of the ‘con’ bullets above are applicable here, but to a lesser extent since the AL process would be for a sub-set of contracts.</p>
Options	Pros	Cons
<p>3. Existing process where contracts can move forward once the EE-PRG reviews the RFPs, bids, scoring and contracts.</p> <p>Also has the dispute resolution process as the option for raising concerns with contracts that are out of compliance with Commission direction.</p>	<p>a. Allows for speedier process.</p> <p>b. Already existing practice.</p> <p>c. EE-PRG/IE stakeholder process should reduce concerns and resolve issues ahead of time.</p> <p>d. Less uncertainty for the implementer community regarding delays in contract implementation.</p>	<p>a. Creates market uncertainty for contracts that are contested by parties.</p> <p>b. Concern that the dispute resolution process was expanded in D.15-10-028 to implementation plan disputes, which likely does not cover a disputed solicitation process and/or disputed contract.</p> <p>c. The dispute resolution process is a formal one that could require substantial record development and could be much lengthier than an informal advice letter process.</p> <p>d. The dispute resolution mechanism has never been used, so relying upon it invites considerable uncertainty into the contract approval process.</p>

D. Draft order of operations

Table 4: Order of Operations and Roles & Responsibilities to Ensure Compliance with Process

	Public review of solicitation scope (this is the pre-IE/EE-PRG process currently being discussed by the CAEECC)	Review of RFP draft	Launch solicitation	Review Proposals	Present final scoring	Contract negotiation and signature OR Advice Letter
PA	<p>Write high level solicitation scope from the BP (expanded if needed within CPUC approval). This initial info is presented to the appropriate CAEECC subcommittee as a “refresh” of the PA solicitation plan approved by the CPUC as well as an opportunity to provide updated data analytics of the particular solicitation focus.</p>	<p>PA incorporates any feedback from CAEECC public subcommittee review and develops the full RFP for IE/EE-PRG review. Examples include:</p> <ul style="list-style-type: none"> <li>• RFP language</li> <li>• Scoring criteria/weight</li> <li>• List for distributing RFPs (e.g., PEPMA)</li> <li>• Schedule commitment</li> <li>• Planned “Bidders Conference”</li> </ul>	<p>Once EE-PRG/IE review of RFP and criteria is complete and any incongruities resolved, PA launches the RFP and holds “Bidders Conference.”</p>	<p>PA and IE receive proposals and score them according to the scoring criteria. PA and IE discuss/resolve any discrepancies prior to presentation to EE-PRG.</p>	<p>PA presents selected offers to PRG, including any justification for selection outside of strict scoring ranks.  (As noted below, the IE is present at PRG meetings)</p>	<p><i>*This column to be filled in once there is a decision on which option to pursue.</i></p>

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	<b>Public review of solicitation scope (this is the pre-IE/EE-PRG process currently being discussed by the CAEECC)</b>	<b>Review of RFP draft</b>	<b>Launch solicitation</b>	<b>Review Proposals</b>	<b>Present final scoring</b>	<b>Contract negotiation and signature OR Advice Letter</b>
IE	n/a	<p>Reviews the PA’s proposed scoring criteria, list of where RFPs will be posted or sent to, RFP schedule, planned “Bidders Conference.”</p> <p>Ensures they are consistent with Commission policies, guidance, and the business plans.</p>	n/a	<p>IE determines whether the solicitation was conducted fairly and ensures scoring is consistent with criteria.</p> <p><i>*This will need to be updated based on which option is pursued (e.g., IE reviews all proposals, spot checks, or other)</i></p>	<p>IE is present at EE-PRG meeting where PA presents to stakeholders and CPUC. Provides opinion of process and recs as needed.</p> <p><i>*Update scope of report once details of are determined</i></p>	<p><i>*This column to be filled in once there is a decision on which option to pursue.</i></p>

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	<b>Public review of solicitation scope (this is the pre-IE/EE-PRG process currently being discussed by the CAEECC)</b>	<b>Review of RFP draft</b>	<b>Launch solicitation</b>	<b>Review Proposals</b>	<b>Present final scoring</b>	<b>Contract negotiation and signature OR Advice Letter</b>
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	The EE-PRG brings up concerns based on IE report OR if no items of contention, the process continues.	<i>*This column to be filled in once there is a decision on which option to pursue.</i>

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