

## **Joint-IOU Responses to Stakeholder Feedback on Standard LGP Contract**

The following table provides the joint-investor-owned utility (IOU) responses to the questions and comments received from the stakeholders attending the California Energy Efficiency Coordinating Committee (CAEECC) Ad Hoc Workshop on a Standard Local Government Partnership (LGP) contract. The IOUs are required, per Ordering Paragraph 31, of the California Public Utilities Commission’s (Commission’s or CPUC’s) Decision on the IOU Business Plans, to develop certain standard and modifiable terms to be utilized in all IOU contracts for all local government partnerships (LGP).

The IOUs utilized as its base the joint-IOU standard third party contract terms and conditions, also required by the Commission, that were vetted through the CAEECC process and are currently pending before the Commission. The IOUs then made changes to those terms that specifically apply to LGPs, and based on the feedback given here, will make some additional changes to reflect certain unique features of LGP contracts. In part, because the specific programs have not been proposed yet, the IOUs have only included those terms and conditions specifically required by OP 31 and intend to negotiate additional specific terms and scope of work items with the Implementer, including local governments, after bids are selected and prior to contract execution.

The IOUs appreciate the thoughtful comments submitted, and the IOUs jointly reviewed the comments. The stakeholders largely identified similar issues in their comments, so the IOUs are responding to those commonly identified issues. Several of the comments related to issues outside of the contract itself, such as questions and concerns related to the business plan, budgetary or solicitation issues. These questions and concerns should be directed at the respective IOUs and discussed in another forum. The IOUs are eager to discuss these important issues, which may vary by IOU, with their Partners, but believe that this CAEECC process should focus specifically on the standard LGP terms and conditions directed by the Commission. Thus, this response document will not address comments outside the scope of the standard and modifiable terms and conditions. The IOUs will work on incorporating edits to the contract itself and will share an updated version with CAEECC prior to filing with the Commission on September 4, 2018, after which there will be a 15-day comment period for interested stakeholders.

<b>Comment</b>	<b>IOU Response</b>
Term should be longer than 3 years. Some comments request 5 years; others 7-8 years.	The IOUs believe that 3 years represents an appropriate term for the following reasons: 1) It is a balance between the varying existing contract terms. Some current IOU LGP contracts are 5 years long, but others are only one year; 2) The CPUC requires Advice Letters for contracts longer than 3 years and / or valued at more than \$5 million. While contracts valued at over \$5 million will still need to be filed, if we extend the term to more than three years, every single LGP contract will need to be filed, which could result in a lengthy regulatory process that will add an indeterminate delay to contract implementation; and 3) Three years is aligned with the CPUC’s transition period, and thus is an appropriate starting term. The IOUs agree to consider a longer term initial term after the transition period is over and it’s more clear what programs will move forward.

Comment	IOU Response
Does the CPUC need to approve every contract?	According to the Decision, the CPUC only has to “approve” those contracts that are over 3 years and/or \$5 million through an advice letter. Therefore, the clause re: the contract term beginning upon CPUC approval will be deleted if the CPUC approval process is not triggered. The IOUs will make this clear in the next draft.
Why is the IOU the only entity that can deem a CPUC modification or condition unacceptable?	The IOUs have taken the definition of CPUC Approval and the terms and conditions around such approval from its standard procurement contracts. Those contracts historically only allow the IOU to terminate the contract for conditions and modifications imposed by the CPUC due to cost recovery concerns. The CPUC approval of the program is necessary so that the IOUs can recover its costs of the contract in rates, and if the CPUC puts conditions limiting cost recovery, the IOUs require an opportunity to terminate, at no cost to either party.
There are numerous questions regarding the definition of “Implementer.”	“Implementer” will be defined as the party to the agreement that will implement the contracted-for EE program. Depending on the IOU-model and solicitation, the Implementer may be an LGP or a non-LGP third party.
Change the term “officer” as that does not represent a common title within local government organizations	The IOUs will consider changing “officer” to a modifiable placeholder consistent with the placeholder for the IOU. The appropriate titles for each party will be determined prior to contract execution.
How is “notice” defined?	Each IOU will use its standard notice provision that designates a representative for each party and their contract information for issues related to the contract.
Should reference to federal jurisdiction be removed?	The IOUs will consider the removal of reference to federal jurisdiction.
<i>To the extent legally permissible</i> , all negotiations and any mediation agreed to by the Parties are confidential and shall be treated as compromise and settlement negotiations, to which Section 1119 of the California Evidence Code shall apply, and Section 1119 is incorporated herein by reference.	The IOUs will accept the recommendation and add the phrase “ <i>to the extent legally permissible.</i> ”
<u>Governing Law</u> . This Agreement shall be governed by the <del>internal</del> laws of the State of California, with reference to its conflict of laws principles.	The IOUs will accept the recommendation and remove the term “ <u>internal.</u> ”
What does “undisputed” payment mean?	Undisputed means that the payment amount is not contested or in dispute. This is a standard legal term used by the IOU’s and is contained in multiple IOU contracts, including contracts with LGPs.
What does Section C1b(i) mean? It is broad enough to allow IOUs to terminate based on any small claim.	This is a standard legal clause used to protect all stakeholder interests by prohibiting making <i>materially</i> incorrect or misleading representations that cause or can cause damage(s). All program implementation materials and information are required to be accurate.
Explain Section C1b(iv) (public safety clause).	Safety is the paramount concern of the IOUs and this clause is necessary to ensure all precautions are taken to ensure safety. Termination is not automatic.

Comment	IOU Response
Why should there be a termination for cause section if there is a termination for convenience section?	Both sections are necessary because various terms, including the damage amounts, notice, etc., for termination for cause are different than the terms related to termination for convenience.
Is there a cure period for default?	Yes. Per C1a(i), for failures of any material covenant, obligation, term or condition, the party in default has 30 days to remedy the default.
The notice period for termination should be greater than 20 days.	The IOUs are open to considering a longer notice period for termination.
Add a clause stating that termination must be “reasonable and in good faith.”	The purpose of termination for convenience is that there does not have to be a specific reason for termination. Such a term could cause unintended legal consequences or create ambiguity.
Re: termination by CPUC order, why does Company have sole discretion?	The LGPs are CPUC-approved programs and the CPUC has the authority to alter or eliminate LGPs. The IOUs are regulated by the CPUC and it is incumbent on the IOUs to respond accordingly to CPUC orders to maintain compliance. Further, it may be incumbent upon the IOU to react to a CPUC decision immediately, or by the dates specified in the CPUC order/decision, rather any notice periods specified under this termination clause.
What is demobilization?	Demobilization is the process of removing equipment off a work site. As suggested, the IOUs may consider a minimum time-period for demobilization.
Local Governments cannot adhere to a pay-for-performance model.	Pay-for-performance is not mandated in this contract. Rather, it is stated as a <i>preference</i> , which is in line w/ CPUC guidance in recent proceedings. However, because the reference to the types of payment terms are exemplary only and not actual contract provisions, the IOUs are considering removing the examples for the LGP contracts with the understanding that some of the examples may not be as applicable to these contracts as others. Removing the chart will avoid confusion and allow the parties to propose the payment terms they desire.
Term “Bidder” Should be changed to “Implementer”	Implementer is the party that actually executes the contract. Each reference to “Bidder” refers to negotiations by the potential counterparty <i>prior</i> to execution of the contract and prior to the point at which the Bidder becomes the Implementer.
Define “Final Implementation Plan.”	The IOUs will consider inserting a definition for “Final Implementation Plan.”
How does company have “sole discretion” in determining that the Implementer is not meeting KPIs?	This is a standard legal clause. The KPIs will be negotiated between the Parties prior to Contract execution. It is the Company’s responsibility to determine whether the Implementer is meeting the KPIs.
Questions/Concerns around Attachment B, Table 1, “Examples of Foundational KPIs.”	The IOUs agree that the KPIs for other contracts may or may not be applicable to LGPs and therefore will consider removing this illustrative table.
Questions/Concerns around Attachment B, C1 (“Company Data”).	The IOUs will consider inserting language into the standard terms allowing for disclosures required by the Public Records Act and other applicable statutory disclosure requirements.

<b>Comment</b>	<b>IOU Response</b>
<p>Generally, the contract language is modeled on “resource” programs, rather than non-resource programs.</p>	<p>KPIs for non-resource aspects of the LGPs will be negotiated prior to execution. While the IOUs are being directed to increase LGP cost-effectiveness, we value certain non-resource aspects of the program and will track performance of those aspects, just as with the resource aspects of the programs, through agreed-to KPIs.</p>
<p>This contract does not include terms and conditions that Local Governments would need to participate. These include indemnification, Public Records Act, non-discrimination, force majeure, severability, governance law, attorneys’ fees and cooperation clauses.</p>	<p>The filing only reflects certain terms and conditions to be included in the Contract specifically directed by OP 31. These terms and conditions do not represent the complete contract that will be executed between the Implementer and the IOU. Each IOU has additional terms and conditions that will be added and subject to negotiation prior to execution of the final contract.</p>