**Semi-Annual Energy Efficiency Third Party Solicitations**

**Stakeholder Engagement Forum**

**Monday, January 31, 2022**

**DISCUSSION NOTES BY PRESENTATION TOPIC**

Survey link: <https://forms.gle/jM62pxv3qCtiKPEz5>



Over 130 individuals attended the January 31, 2022 Stakeholder meeting.

**IOU Presentations**

**CONTRACT RENEWAL FACTORS**

**Ely: On the PG&E contract renewal side, factors to consider…whether to renew. Didn’t see market dynamics, how is implementer impacting how partners and trade allies work.**

Multiple factors will be considered in the decision to extend, re‑solicit, or terminate contracts:

* Program performance
* Portfolio goals/metrics
* Impacts to the customers served by the program​
* Changing portfolio needs
* What about DBE or SBE markets?
* Josa B (PG&E): In your two questions, the second one was how to consider DBE/SBE, I have no answer but have noted it. How would we look at market dynamics? Will take that back and put together a thorough answer. A little bit would be included in the established metrics for the contract.

**MARKET DYNAMICS**

**Ely: In past locations, have seen where implementers can suffer unintended consequences that, over a longer period, have an adverse effect on the market. Not allowed to grow.**

* Josa (PG&E): Looking overall toward the outlined metrics, but need to do more to answer thoroughly.
* Chris (SCE): No thoughts on renewal strategy and how SBE and DBE plays into that but fair point. We think our request for a single-stage RFP would enable smaller bidders to participate and would help meet those needs.
* Roland (SDG&E): Like the update Edison provided, as part of our business plan we are advocating for a single stage approach, which would benefit smaller bidders/commit fewer resources to the process. We are engaging with our larger primes to subcontract work out with smaller companies for some components of existing contracts/proving to be very productive. First and foremost, is vendor meeting the KPIs that were agreed upon, followed by changes in the market, and if the program design is meeting those changes.
* Emma (SoCalGas): we have a process designed to attract smaller businesses and hope to increase newer and smaller bidders to participate. As part of our contract renewal, we are adopting recommendations made.

**SINGLE STAGE AND INNOVATION**

**Lisa Paulo: For the IOUs who advocate for single-stage approach, how do they plan to ensure innovation is not negatively impacted since this is already baked into the two-stage approach?**

* Chris, SCE: We consider innovation as a scoring criterion in both RFA and RFP staging so shortening it would provide more innovation. Helps innovation in the long run.
* Roland, SDG&E: No impact on innovation by going to a shorter process.
* Matt, PG&E: Echoing what others have said, going to a shorter process we see that as an advantage in getting more participation and using all scoring/consolidating will cover innovation.

**REFERENCING STATEWIDE PROGRAMS**

**Email: Wondering why two of the IOUs included statewide programs and the others didn’t reference them (SCE/SDG&E).**

* + Josa: Oversight on PG&E’s part to include.
	+ Emma: Same for SoCalGas
	+ Justin: Will add into notes.

**LONG TIMELINES**

**Email: D.21-12-011 requires $30M for reliability-focused programs in 2022 and 2023, but the solicitation schedule calls for a launch in Q2 2023. How will this meet the emergency needs called for by the Commission and the Governor during those two program years?**

* Justin: These programs need to be solicitated from the market, designed entirely by 3P implementers. The decision required an April release for the RFP and call for RFPs and a November target for the submission of an advice letter. The Decision understood that the timeline would yield summer 2023 savings.

**Greg W: For the emergency reliability programs, the solicitation timeline seems quite long and out of line with the statewide urgency conveyed by the governor and CPUC. What steps are the IOUs taking to speed up the solicitations process?**

*From Allison: Page 32 of D.21-12-011: "We also recognize, however, that it will be a challenge to conduct a solicitation, execute contracts, submit, and receive approval for contracts, as applicable, according to the normal third-party solicitation process, and get programs on the ground for the summer of 2022. Still, there may be value for 2023, and therefore we still find this to be a valid concept worthy of funding and effort. Therefore, in this decision we approve a total statewide incremental budget to conduct an additional third-party solicitation to result in programs launched before summer 2023"*

* Roland: IOUs were required to file an advice letter to address 2022 and the joint solicitations we are all working on for our territories would not be in effect until 2023 and be in addition to that.

**SUPPLIER DIVERSITY**

**Email question: The recent evaluation showed that the new solicitation process has not produced more diverse 3P suppliers and that 2 large firms account for 68% of contracted budget dollars and 86% of SCEs. The IOUs very restrictive contract terms, requirements for 100% pay for performance, requiring implementers to carry the costs of services and incentives sometimes for several years, requirements for performance assurance payments to the utilities upfront, very high liability limits and insurance requirements which are uninsurable for small and medium businesses. DBEs are typically small and medium businesses, what are the IOUs doing about adjusting contract terms for smaller DBEs?**

* SDG&E (Roland): We are obviously operating in the same decision mandate to prioritize pay-for-performance. We found in negotiations there is room to find common ground to address the risk factors to make sure it’s compatible with program budget and factors associated with bidders, particular smaller bidders and we have been able to adjust successful yin past negotiations. And were able to bring in smaller/diverse bidders. We offer flexibility if we work out the important contract details, such as insurance requirements.
* SoCalGas (Emma): With regards to incorporating new and diverse business partners, our smaller solicitations for this year (5) the whole intent is to attract smaller business partners for those programs and involves looking into our internal processes in holding these solicitations to make sure they are adaptable and applicable and relevant to smaller contractors.
* SCE (Marissa): We are like SDG&E, but now that the solicitations are coming to a close and we have equity and market support coming on next, we will have a review and adjust our approach as we see the risk for those might be different/part of what we are assessing for marketing support and equity so as they shift there is opportunity for adjustments to be considered. We expect to see more as these solicitations get more targeted
* PG&E (Matt): Our process is focused on diversification of the portfolio, and we’ll continue to monitor it and desire a great variety of contracts across all sectors. We adjust in negotiations/have made accommodations in the past to make the contract fit.

**IE Presentation**

**IEs and OPINION DYNAMICS PROCESS EVALUATION**

**Email: Did the IEs have any major point of disagreement with the major findings of the Opinion Dynamics Process Evaluation?**

* Josa: PG&E reviewed the report and submitted comments. Best place to find PG&E’s comments.
* Kim (IE): The IEs as a group have not engaged with the evaluation results and have not had conversations about this/we work independently. This comment is not formal or vetted. I had some areas where process evaluation is tough. From my perspective there are some things on that report that I don’t agree with based on my observations. Basic stuff, no disagreements. I will talk about SBE and DBE implementers later in this meeting. In the OD report, it seemed to indicate that was a bigger emphasis on this than there ever was: ‘Innovation and Cost-effectiveness’. There are many other policy areas that matter that were not being considered and now that is being considered. Not fair to judge people on things they didn’t originally set out to accomplish. Emphasis on objective vs. subjective is well-explained and in an environment where third parties are asked to be designing programs, not comparing apples to apples. No such thing as purely objective criteria.

**RISK DISTRIBUTION**

**Ely: Regarding risk: Can IEs speak to how they feel about the IOUs distribution of risk and when?**

* Elizabeth: Every contract is different/different IOUs approach this differently with the implementer.
* Don: Regarding the draft study, one point made by the consultant, I think there must be more incentives provided to the implementer. But we have an attempt to balance risk between the rate payer and the implementer. Reflect what risks and rewards does the IOU have. Typically, if other party implementer is performing, they get paid/no additional performance assurance. Or significant holdback. It’s quite a game changer for the third-party implementers and needs to be reflected upon more between the IOU/commission/stakeholders on what the risk is. If someone performs, they get compensated. Some work needs to be done.
* Kim: Don's comment was spot on, I agree.
* Grey: What do you mean about IOUs distribution of risk?

 **Ely: concerns I heard about performance assurance on IOU contracts.**

* Grey: I tend to agree with Don. Probably need to revisit from the standpoint of various parties. From our view, the IOUs are responding to direction from the PUC that emphasis should be performance-based. If that should change or made more flexible (and some IOUs do incorporate more flexibility regarding implementer needs). Fair to say change taking place but how do you structure the RFPs themselves to ensure there is alignment between performance and compensation because it’s in everyone’s interest to align around performance.
* Melanie G: Agree that the area of risk additional thought. IOUs are responding to CPUC direction about pay-for performance preferences; however, we believe there can be additional flexibility within that framework to accommodate some payment structures that help bidders with cash flow. We've seen some IOUs accommodate bidders in creative ways and others stick to 100 percent pay-for-performance, often to the detriment of the solicitation process for smaller companies. Performance Assurance can be a high hurdle and may not be adding the appropriate value in all cases.

**Opinion Dynamics Report**

**LONG TIMEFRAMES**

**Greg W: One observation was how does the two-stage process compares to other states. One of the things we have been concerned about is the long timeframe for the two-stage process…two years seems way out of line. Did not see explicit coverage benchmarking to other states.**

* OD: There are a couple of examples in the report that I can share.
* **Greg W: Generally, is the timeframe excessively lengthy in California?**
* OD: We didn’t do a quantitative comparison, so my feedback would be anecdotal. One recommendation is to speed up the process. A goal of a nine-month process when rebids come about.

**RISK**

**From Email: The IOUs have pushed 100 percent of all risk, even risk that isn’t there (in the form of performance assurance and insurance requirements against incentive dollars), on the implementer. For small DBEs, this is extremely costly to participate in, and very difficult to meet all the IOU requirements.**

 **IOU feedback**

* SDG&E (Roland): Our key focus is flexibility during contract negotiation. Not the case for contracts we’ve closed with our implementers. It is a hot topic and important to cover in negotiations.
* Melanie (IE): Not sure what to say, one thing that is successful in negotiations and to Roland’s point, I’ve seen this go very well. When negotiating with smaller business that express cashflow issues (comes up many times with smaller builders) that even if working with a pay-for-performance structure there can be some creative/flexible solutions on how to work that out. And it’s helpful when the IOUs take that into consideration and listen to the bidders concerns that even within a 100 percent pay-for-performance contract there needs some flexibility (to increase smaller bidders to participate)
* Grey: With respect to absorbing 100 percent of all risks, it is fair to say that implementers never bear 100 percent of the risk. There are no stage gates that dictate that bidders must have any percentage of performance-based compensation. It is not a gate that someone must pass to qualify. Is it a factor? Yes. Ultimately it comes down to the flexibility during contracting.

**CONTRACT NEGOTIATION MISALIGNED EXPECTATIONS**

**Email: The report references the ambiguity around "contract negotiations" and the sometimes misaligned expectations between bidders and the IOU's. Could you address your assessment of the "contract negotiation" phase of the solicitation?**

* Regarding pay-for-performance, maybe we need to better define "performance". Performance contracts with risks that the implementers cannot effectively manage put them in a bad negotiating position, particularly when IOUs add a "surprise" third stage to the solicitation. Yes, third parties willfully enter in to agreements, but the jury is still out on whether the reward will be sufficient to overcome the risk. \*Note: Comment is not applicable to all PAs
* OD: Primary themes: specifically challenges with contracting related to risk associated with pay-for-performance and balance of risk and incentives. But one thing there may be some fixes just related to clarification. Ex. Comments in draft: bidder feedback to the ability to have more flexibility in contracts related to bringing in sub-contractors. May need more clarification on what is allowed. Similarly related to risk, bidder comments associated with the potential with unforeseen events. Bidders perceive they carried risk in the case of unforeseen events (ex. Covid).

**CET update**

**CET UPDATE TRAINING**

**Greg: Would it be possible for CPUC to hold a CET update training workshop for implementers and other stakeholders? This might also be an ideal opportunity for stakeholders to identify some of the technical challenges they have encountered following recent updates. Could that CET workshop include the water-energy nexus 2.0 please?**

* Amy Reardon CET: I can ask my boss, and will add this request to the list. Send ideas and timing to amy.reardon@cpuc.ca.gov

**Cultivating SBE/DBE**

**SUPPLIER NETWORKING SYMPOSIUM**

**James Dodenhoff: I participated as a subcontractor in joint IOU symposium. I have not received follow-up information despite two requests to SDG&E. Was new to me/good forum/required a lot of prep to get used to the platform. Disappointed, gave five-minute pitch, asked to fill out an evaluation form but never received. Was under the impression that sub-contractors would have info shared with them as to who attended their pitch or some sort of follow up. Reached out to SDG&E supplier group and never heard anything back. Challenging in virtual framework but there were expectations laid out to foster networking that we all agreed would be a good thing.**

* Kim: I noted the same things/same challenges. Very complicated tool. Evaluation form was also inside the software and hard to use/access. This was the first event. I do think they are looking to improve the next one.

**CPUC MANDATED DBE PARTICIPATION**

**Greg W: With IEs offering insights about DBE issues during PRG is helpful, wouldn't it be possible for the CPUC to mandate DBE participation via percentage carveouts?**

* Kim: Great example of the type of things someone might suggest in the rulemaking.
* Ted Howard: Emphasize it’s an incredible opportunity to add comments on what you believe are the challenges you are encountering and in the survey. (We being the Procurement review groups). We do listen to these comments.

**Bidder feedback**

**ENHANCED FEEDBACK PROCESS**

**Jeff Guild: (chat): Regarding PG&E's enhanced process, the addition of relative scoring feedback provided a lot more clarity. The absolute scoring that we received as feedback in prior session(s) was of little value on its own. Additional subcategories in enhanced process were useful.**

**General discussions/G&A**

**INNOVATION**

**Lisa Paulo: Will innovation be an increased consideration in a single staged effort? Will scoring criteria be revised.**

* SDG&E: Innovation will remain a key component for SDG&E to score bids on either through two- or one-stage. Don’t see many impacts. The weighting will be the same.

Lisa: There isn’t anything new that anyone can add than what was described. Am curious because the two-stage process has baked in that in the RFA and is where you talk about innovation and once you get to the RFP other priorities might take precedent. PG&E tried to maintain a certain priority for innovation in the second phase. But because there was a baked in idea of how to address innovation in a two-stage. Not sure that there was any thought on this. Yes, we will address, but without necessarily any specific idea of comment on how that would work.

* SDG&E: Main difference in RFA the questions and answers we include are lighter and high level. But if we go to one stage, we’d require more details on what innovations are proposed. But doesn’t impact the weighting.

**THIRD STAGE IN NEGOTIATIONS**

**Greg W: I recall a couple of all party/commissioner asked about the de facto three-stage process…stage three being negotiations. Have the IOUs been able to address that question? Are they making changes to not have a third stage as part of their process? I don’t recall hearing a response. If IOUs don’t know the answer would like to get info.**

* Matt (PG&E): I mentioned we have redesigned our RFA/RFP structure and scoring and included in that is the review and negotiations. RFA then RFP. In the RFP stage include interviews with bidders before conclusion of RFP that would eliminate/reduce items that caused a third stage in negotiations.
* Justin (post-meeting): Contract negotiations are discussed in D.18-01-004 and their use is in compliance with the definition for two-stage solicitations.

**EM&V**

**Q: Is there a requirement for IOUs to evaluate their programs? Do they have budgets aside for evals for 3p programs, if not will the CPUC require that? Future iterations of EM&V?**

* Roland (SDG&E): No separate budgets set aside for SDG&E.
* Emma (SoCalGas): No budgets set aside for EM&V.
* Matt: No exact answer, need to follow up
* Marissa: I have to do the same as PG&E, so many different programs, need to check with EM&V team to see what the plan is.
* Justin: CPUC can get a better response too.
* Allison ED: The third-party programs, like other IOU core programs, are part of the overall evaluation when programs are evaluated through EM&V. There’s not an exclusion of third-party programs. Success of savings delivered are still required as part of the EM&V effort.
* Jeorge Tagnipes: Nothing stopping them/but they do have a bucket.

**CONTRACTS GOING TO SINGLE BIDDER**

**Question: Why do you think that 86 percent of contracted amount for SCE's solicitations has gone to a single bidder? What are the implications on risk if SCE is not able to deliver the savings they have contracted for?**

* Marissa: That was a result of a competitive process. Monitoring for performance may lead to new solicitations. Not going to presume failure. As we monitor and track performance, we will identify gaps and then design solicitations to fill those gaps.
* Elizabeth Lowe: One thing that is not reflected/following the all-hands PUC meeting, the IEs, when focus was on DBEs, started tracking the percentage of DBEs who the prime contractors had committed to contract with. If 86 percent of one company, they are also subbing to other companies. But in implementation, we don’t know. IEs don’t track after implementation in terms of DBE spend or working with subs.
* Melanie Gillette: Valid point/a number of these have a lot of subs involved. Remember these are competitive sols so the results are what they are. Preferences made known/results reflect those preferences.

* Richard Milward: Also, with the given the size of these contracts and SCE does include performance assurance in contract, it’s ultimately beneficial for contracts of this side. Protects SCE and ratepayers from a default. Implementers are providing monthly reports, so results evaluated monthly and the performance assurance on an annual basis and the contracts has an algorithm and procedure for what to do in the event of a default. So even though huge, they do a good job of protecting SCE and ratepayers from damage if there is a default.

**DEFINING “PERFORMANCE” IN PAY-FOR-PERFORMANCE**

**Jeff Guild: Regarding pay-for-performance, maybe we need to better define "performance". Performance contracts with risks that the implementers cannot effectively manage put them in a bad negotiating position, particularly when IOUs add a "surprise" third stage to the solicitation. Yes, 3Ps willfully enter in to agreements, but the jury is still out on whether the reward will be sufficient to overcome the risk. What are the risks the utilities are actually exposed to? Does it match what is put into the contract? Seems like a misalignment of risks. Not our experience with all PAs, but something we saw. Will SCE's plan to fill program performance gaps be able to make a meaningful course correction before years later based on past solicitation timeframes.**

* PG&E (Matt): Overall we try to make our approach, we are looking at new frameworks/acknowledge it’s new and programs getting underway are being monitored, looking at continuous process improvement.

**CONTRACT TERMS FLEXIBILITY**

**Jeff Guild: What about the effect that onerous terms have on the likelihood of a 3P to default.**

* PG&E: Overall we like to maintain flexibility/terms don’t apply to all.
* SCE (Marissa): The pay-for-performance should align benefits burdens and risk to managing the program they designed and are delivering. It is for SCE as a fiduciary agent to the customer and pay for them, the 3p has flexibility in their elements of their program to be able to deliver by making adjustments. We (IOU) are out of the day-to-day management of these programs. They need to maneuver to deliver on the savings.