

Coordinating Committee Meeting #15 and Working Group Meeting on Standard and Negotiable Contract Terms

February 15, 2018 2:00 to 5:00
NRDC, 111 Sutter Street @ Montgomery, 21st Floor, San Francisco
and
February 16, 2018 9:00 to 1:00
PG&E Pacific Energy Center, 851 Howard St, San Francisco

Facilitators: Dr. Jonathan Raab, Raab Associates and Dr. Scott McCreary, CONCUR

Meeting Summary

California Energy Efficiency Coordinating Committee (CAEECC) Members and proxies attended this two-part meeting on standard and negotiable contract terms in person or via webcast. A list of the Members present on February 15 and 16 respectively is included in Appendix A. On February 15, approximately a dozen members of the public were present in person and an additional nearly 40 individuals joined via webcast. During the second meeting on February 16, approximately two-dozen members of the public were present in person and an additional approximately 20 individuals joined via webcast. Meeting materials are provided on the CAEECC website at: <https://www.caeec.org/2-16-18-caeccc-working-group-meetin>.

DAY 1 – COORDINATING COMMITTEE MEETING #15 AFTERNOON SESSION

SESSION 1: STANDARD CONTRACT REQUIREMENTS AND PROCESS: STANDARD CONTRACT TERMS

David Roellich, SDG&E, presented draft Standard Contract Terms that the IOUs developed on each of four topics: (1) Eligibility (type of business, license requirements, insurance, and bonding requirements, etc) (2) Safety Requirements (3) Dispute Resolution Process and (4) Termination Process. He explained that the IOUs will continue to refine the draft Terms based on stakeholder feedback and that the final terms will be filed with the CPUC in mid-March. Stakeholders will have an opportunity to comment further at that time. The draft Standard Contract Requirements and Process is available on the CAEECC website (see link above).

In the notes below, the comments and questions were made by one or multiple Members and/or public attendees. The responses from the IOUs to questions and comments are listed in italics following the relevant comment or question.

Comments and Questions on Eligibility:

- General Contractor licenses should not be required in many cases. The language should be very clear as to when a General Contractor license is required.
 - *The intent of the word “contractor” is not to imply that the person needs to be a General Contractor. Another term such as “implementer” could be used in place of “contractor”.*
 - *The language says “to the extent applicable” so if the license isn’t needed, the flexibility for this exists.*
 - *The IOUs are directly contracting with the individual implementers, so they would need GC licenses.*
 - *Members should consult their legal support before providing further feedback at this level of detail.*
- *When will IOU insurance requirements be available for review? These will be included as an appendix of the filing. Comments on this can be made after the filing.*

Comments on Safety Requirements:

- *Some of the limitations on prior criminal convictions seem to contradict definitions put forth for the disadvantaged workforce development sections as they limit a large population from being able to work. We need to go back and ensure that this section complies with the law on disadvantaged communities and workforce development.*
- *Many of background requirements seem overly restrictive, if not draconian.*
- *Pre-employment background screening for every employee can be very burdensome for both large and small companies. This screening should be limited to contractors who go to a customer site, and not apply to all employees of a company. The same applies to fitness for duty.*
- *The request for quarterly financial statements is not reasonable. Please ask for financial statements within a reasonable timeframe. To be meaningful these statements should be audited to be worthwhile. The language says “as may be requested by the company from time to time” and is not required for all contracts. Regarding audits, we can look into that.*

Comments on Dispute Resolution Process:

- *What is the logic for and origin of this provision? Some of this is standard. In other cases, the provisions used by individual IOUs differed considerably so we felt it was most appropriate to present general language.*

Comments on Termination Process:

- *Much of this language looks to be standard boiler-plate. It needs to be reviewed and updated.*
- *Termination/Modification for CPUC Order: The language here is too*

stringent. The word “directive” could be perceived to mean “disposition”. The risk of CPUC policy change needs to be shared between implementers and IOUs, especially when that risk is so unpredictable. *We need a clear transition process for those who have already been contracted with when a PUC ruling to stop activity occurs. We have to have the ability to cancel a program if the CPUC changes its programs. We will look to see what your members propose.*

- Termination for Convenience: Some commenters posited that this entire clause would have a chilling effect on potential bidders and should be deleted, while others commented that the choice of “10 business days’ written notice for termination is too short and unreasonable.
- Where does a “termination for convenience” clause come from? *This comes from consensus decision among the IOU stakeholders.*
- Governments allow for 30 days (not business days) for termination, where does 10 days come from? *If termination is without cause, I am not sure that this applies. We can come up with something that is not as daunting to potential contractors.*

Feedback Summary: As the derivation of much of the proposed text is a synthesis of standard contract terms, CAEECC members recognized the need for the text to be more targeted in individual contract documents. Specific concerns around the need to share risk of CPUC policy change among implementers and IOUs were expressed. Members also expressed the need to define a reasonable termination period more congruent with standard contract practices and questioned whether there should be a termination clause for convenience at all. They also expressed significant concerns with the stringency of the background check requirements.

SESSION 2: NEGOTIABLE CONTRACT TERMS

Matt Evans, SCE reviewed the IOUs proposed definition for disadvantaged workers. He noted that the IOUs looked for ways to align with other tools that already exist for identifying disadvantaged communities (CalEnviroScreen) to in turn identify ways this might be used to apply to disadvantaged workers. (See proposed language on CAEECC website – link above.)

Comments and Questions on Disadvantaged Workers: Definition

- Some Members asked whether the IOUs intention is to use the same method and allocation as the state GHG fund allocation in determining disadvantaged workers, or instead whether they intended to use only parallel underlying data sources (CalEnviroScreen). They noted that while using an established data source is wise, the categories cannot be so broad as to be overly inclusive. One Member noted that CalEnviroScreen is designed to identify environmental justice areas but may not be as effective in identifying areas of low employment. *Only the underlying data is being used. Please consider that any data source used here must be operational and easily available in order to operationalize this.*

- The proposed definition of disadvantaged worker is too narrow. The homeless, veterans, disabilities, and others should be included.
- Are the proposed percentages specified somewhere? *The next step is to determine the percentages, and these may vary by IOU depending on how this overlaps with their service territory. This step will be done before the filing.*

Comments on Diverse and Disadvantaged Business and Employee Terms

- Is the language listed here what is already required under General Order 156? *Yes.*
- Members asked whether the terms apply to the employees of an organization or to the specific individuals hired to do the implementation. One member noted that assurance is needed that workers have access to jobs, and this assurance is lacking in this proposal. Members noted that greater clarity is needed to better understand whether the terms apply to (1) employers (2) employees (3) contractors and whether it applies to a single contract or a full program goal. *This applies to those organizations to which we subcontract, not the employees of the organization. First we need to identify the goal that the PUC seeks to meet. Then we will know better how we can meet those goals. In addition, keep in mind that disadvantaged workers can be targeted not only through hiring but also through other means including recruitment, training first source hiring, recruitment board, and many other means. The fact that the Decision is not entirely prescriptive allows greater flexibility in finding terms that are acceptable to all.*

Feedback Summary: The underlying data source and methods should be operational, and not so broad as to be overly inclusive. The definition of DBE should be broadened to include members of the workforce, including veterans, homeless, those with disabilities, and others. Greater clarity is needed regarding whether DBE applies to employers, employees, and/or contractors; and whether the terms apply to a single contract or a full program goal.

PRESENTATION: COALITION FOR ENERGY EFFICIENCY PROPOSAL RE: DIVERSE AND DISADVANTAGED WORKER ACCESS TERMS FOR THIRD-PARTY ENERGY EFFICIENCY CONTRACTS

Tom Enslow presented the Coalition for Energy Efficiency's proposal providing alternate language on diverse and disadvantaged worker access terms. (See proposed language on website - link above.)

- What does "enter into a hiring agreement" mean? *That statement means that a contractor agrees to look at the pool of employees, and make a good faith effort to ensure that 20% of the contractors' employees would be disadvantaged workers.*
- What would happen if there are not eligible employees for the specific job

needed. There may be parts of the portfolio to which that these terms don't apply. *We've left this vague, so that implementers can make their own decisions.*

- Would the proposed the 25% of CPUC funding requirement apply to the total portfolio or to each individual IOU? *By IOU.*
- Is the goal to support a disadvantaged workforce for installation or more broadly? *This is a specific proposal for installation and provides a framework for thinking about it more broadly. If IOUs would come up with proposals for other areas, that would be great.*
- Did you consider how you would vet the pool of employees that aren't captured in the CalEnviroScreen score? *Contractors will look to programs that work to support disadvantaged workers in these categories.*
- What are the consequences if these goals are not met? *We use the language of good faith effort. This is subjective, and there will be some subjectivity, but ideally the final contract or implementer would define a good faith effort.*
- Are these projections only for implementer installations and not statewide midstream program? *For the spec requirement for inclusion goals, yes. But generally no matter what kind of program, there is a catchall for disadvantaged workers.*
- It seems difficult to meet these targets within organizations. *We are targeting hiring practices and new hires, not setting a requirement for a certain number of overall employees.*
- What defines a new hire? *Permanent hires.*
- Which entities would need to be included in the hiring agreement? *Ideally entities with a proven track record, and we are open to input. Initially that may mean letting the entities decide, but if that is not effective, then we could outline more concrete requirements.*

PRESENTATION: NRDC PROPOSED DEFINITION OF DISADVANTAGED WORKERS

L. Ettenson presented NRDC's proposed definition for disadvantaged workers. (See proposed language on website – link above.)

Comments on NRDC's Proposed Definition:

- Using CalEnviroScreen can skew the results, because areas with environmental justice issues don't necessarily align with areas that have workforce and unemployment problems.
- CalEnviroScreen was proposed by a Commissioner, but there are opportunities for other categories and for convergence across the proposals.

Overarching Discussion on Disadvantaged Workers:

Though multiple proposals were presented, CAEECC members observed that there was a significant degree of overlap and convergence among the proposals. There is room to include a broader definition of DBE, while ensuring that the definition is not so broad as to be overly inclusive. There is a need to more clearly identify whether the DBE definition applies to employers, employees, and/or contractors and to clarify the types of workforce development targeted (hiring v. good faith effort v. targeted recruitment, etc). There is a desire for the terms to apply to workforce development goals broadly.

IOUs asked those submitting proposals to carefully consider data sources and how the terms proposed would be implemented. IOUs also asked that Members apply their own data sources to potential terms and determine whether these might capture the workforce goals.

Members discussed the benefits of convening a meeting amongst a small group over the next two weeks to determine whether greater convergence amongst the proposals can be found before the IOUs need to file their approach.

SESSION 3: WRAP UP

J. Raab reviewed tomorrow's schedule, next steps from Day 1, and then adjourned the meeting.

DAY 2 – WORKING GROUP MEETING

SESSION 1: BRIEF RECAP/GOALS FOR DAY

J. Raab briefly outlined the goals of the day: Receive the proposal from the IOUs on Workforce issues, allow time for Q&A, receive the Workforce proposal from CEE, and discuss the similarities and differences between the proposals. Then to move on and discuss each of the other negotiable contract terms provided by the IOUs.

SESSION 2: NEGOTIABLE CONTRACT TERMS (CONT.)

PRESENTATION: NEGOTIABLE TERMS (WORKFORCE QUALIFICATIONS AND QUALITY INSTALLATION REQUIREMENTS)

Chris Kato, PG&E, provided a presentation on terms for workforce qualifications and quality installation requirements. He explained that this document is a draft framework (see proposed language on website – link above), which was developed through collaboration among IOUs and has been drafted in preparation for filing next month. He emphasized that the examples provided are meant to be illustrative and to elicit conversation and discussion. He requested feedback from the group, which the team of IOUs will work to integrate.

Questions and Comments on Workforce Qualifications and Quality Installation Requirements:

- NRDC is exploring ways the terms can be feasible for IOUs while also ensuring we are getting the right skills without eliminating anyone (union or equivalent). It is difficult to be non-exclusive using the “knowledge, skills ability” approach because certifications are required. We would like to find ways to create equivalencies to the certification/experience requirements to create a more even playing field. *No one is saying we can't do KSAs, but there is a timing issue with these particular solicitations. This is a starting point, we expect these to evolve. As part of SB350 the CEC is developing contractor policy. Many factors go into defining qualifications, and we want to look at these in combination with KSAs. The goal is to incentivize people to go through the programs without excluding companies.*
- Both NEB and TAB should be included in the list of skills certification or experience requirements. Several standards should also be included such as ASHRAE. *This is an illustrative list--please submit your suggested additions.*
- The general approach works, as long as it can be inclusive.
- As with yesterday’s proposal, there seems to be confusion between the term “contractor” as in company or entity contracting to perform services and “worker” doing the hands-on tasks.
- At the specific measure level, recognize that there are many types of HVAC systems, and the standards don’t necessarily ensure that they are installed well. *That is exactly why this is an illustrative list. We don't know what the programs look like: they will be designed and implemented by the contractor. These are the certifications relevant to ensuring a skilled and trained work force. The companies doing the work have the responsibility to hold their employees to a certain level of excellence.*
- At Rising Sun, we are worried about the BPI certification for Residential. We train youth to do low-tech measures that do not require certifications and we would like explicit language included in the solicitations that will provide value to programs like that. We’re reaching hard-to-reach communities and should not be excluded because of a lack of certification. *In fact, this is not intended as a list of requirements. The requirements will be set by the contractors who submit the proposals. BPI is included here because it is used frequently in residential programs, but this is only an example of the type of certification that could be included in a proposal.*
- How might market clout influence the decisions of PAs and whether or not they are reasonable? *Every program will be different, so the IOUs would work with you to develop the program and make decisions on a case-by-case basis. We would hear your design and your unique circumstances to make sure that every feature is justifiable. Solicitations will be less prescriptive than they have been in the past.*
- How do requirements differ for people managing the programs and those

doing the work? Where is the line drawn? This will need to be clear to bidders. *Again, I would ask you what is your recommendation? Is the supervisor better informed if they also have the certification, or is their role solely administrative?*

- Asking contractors to provide monthly or quarterly financial statements is next to impossible. *We appreciate these comments – please tell us not only what is unreasonable, but also what IS reasonable. We are looking for proposal from you that include the appropriate level of detail as far as what is implementable.*
- Experience should be incorporated in the qualifications. Many extraordinarily qualified workers lack formal certifications. Certifications are expensive; we don't want that expense to exclude those well-experienced members of the industry. *Yes, experience is absolutely a consideration and a strong component of these qualifications.*
- A longer process issue is that we are developing procurement review groups and that utilities are developing a single NDA, so that folks who are eligible for programs can discuss this development. Now there are members of the group who don't have a financial interest, but lack expertise. When we receive bids, we lack the ability to evaluate the quality of the proposal. This may present a role for an independent evaluator.

PRESENTATION: COALITION FOR ENERGY EFFICIENCY PROPOSAL FOR STANDARD NEGOTIABLE CONTRACT TERMS TO ADDRESS WORKFORCE QUALITY

T. Enslow presented the CEE proposal, which includes both a general workforce standard contract and more prescriptive requirements for three areas: (1) HVAC (2) lighting controls and (3) large projects. He explained that these programs vary widely in effectiveness, so need more prescriptive requirements. (See proposed language on website – link above.)

Comments and Questions on CEE Proposal:

- IOUs have stated that the onus is on the bidders to make sure that workers meet compliance. But in many situations meeting the requirements is next to impossible, especially in upstream programs. We hear more and more that Californians should pay for performance, so increasingly the onus will fall to implementers, contractors and customers. I am not sure that requiring specific certifications does anything on top of that to ensure that qualifications are met.
- Contractors should not set standards. This is a regulatory process, to ensure that interested parties set proper standards. *IOUs: We are suggesting that contractors propose standards, and that IOUs set the standards by reviewing and evaluating the bids. Many factors including cost effectiveness, as well as quality, go in to evaluating bids. The most appropriate bid for achieving the portfolio will receive the bid.*

- When implementation plans are submitted, it may be too late for IOUs to evaluate whether requirements have been met. The IOUs may consider moving that step earlier in the process.
- It may be useful to simply list the criteria for a journeyman (e.g., having worked 5 years) rather than using the term “journeyman”.
- If an incentive is provided for an HVAC system that is installed incorrectly, then there is no reason for that incentive to exist.
- We should also be clear that there is a conflict of interest here. In practice, the lowest bidder gets the job, but doing the work with properly trained individuals is more expensive. This is why we have state policies that require these standards.
- Projects should be evaluated based on metered savings and not MV&E.

Summary of Key Comments on the Similarities and Differences Between the Two Workforce Proposals, and Further Considerations:

- There is little difference between the general requirements of the two proposals.
- CEE recommends that for HVAC, lighting control and large projects need to be more specific and prescriptive, and an IOU agreed to consider this.
- Experience needs to be explicitly identified as a criterion. IOUs would like to hear more from contractors on minimum levels of experience.
- Bidders should have the option to demonstrate “equivalent” experience or to opt-out of certain criteria
- CEE will consider raising the definitional threshold for “large projects” from \$20,000 or larger.
- CEE agreed to look into the other lighting standards on the IOU’s list to see if any were comparable to CALCTP.
- Selecting specific criteria or evaluating one over the other is a slippery slope, so some flexibility needs to be present. Setting minimum criteria makes sense.

SESSION 3: OTHER NEGOTIABLE CONTRACT TERMS (CONT.)

David Roellich, SDG&E presented on other negotiable contract terms, including M&V requirements, process and evaluation metrics. See proposed language on website – link above.)

Comments on Other Negotiable Contract Terms:

- A. Progress & Evaluation Metrics:
 - Implementation plans should not necessarily be part of a bid.
 - What level of contractor does the sustainability requirement apply to?
This depends. If the bidder doesn’t think it applies, s/he can make that

- *argument in the proposal.*
 - Where did the specific KPIs come from and will they be weighted? *These are illustrative, and modifiable. These are examples that have been in previous contracts of EE programs. We tried to select inclusive KPIs. There is no explicit weighting - the bidder can chose to weight the components.*
 - Will KPIs related specifically to disadvantaged workers be considered? *Yes, if that is part of the proposal. We want the bidders to propose the KPIs they think should be used to evaluate their programs.*
 - Establishing broad categories for KPIs rather than a “free for all” would be useful. *We intend to have minimum standard for KPIs as a place to start.*
- C. Payment Schedule and Terms
 - Modification of funding clause can be problematic when you have been planning around a certain project for a year or more. Is there a way to make this less burdensome?
- D. Measurement and Verification Requirements
 - Is the intent of Section D.3 to state that if the deemed savings values for a measure goes down, then the implementer program energy savings will be adjusted accordingly? *Yes, this is correct.*
- F. Data Collection and Ownership Requirements
 - In the standard terms, the definitions of company data and ownership of a work product are too broad and need to be bounded, or they will dissuade bidders. *These terms are meant to establish a baseline; please submit a proposal.*
 - Is there flexibility for the ISO 27001 standard for security measures? *We are trying to set a baseline; please submit an alternate proposal.*

SESSION 4: WRAP-UP AND NEXT STEPS

Next Steps:

- The Facilitator Team will post draft high-level Meeting Summary within 5 business days.
- IOUs requested that parties provide written comments on their proposed contract terms by February 23rd. They requested that proposals include specific alternative language (rather than simply stating disagreement with certain text). IOUs asked that Members submit comments on all aspects of the contract terms by the 23rd, even if the planned call (below) on disadvantaged workers has not yet taken occurred. Comments should be emailed to Susan Rivo (susan@raabassociates.org), she will post these on the CAEECC website and notify the IOUs.

- A 60-90-minute call on diverse and disadvantaged workers convened at NRDC and via the Blue Jeans platform will be held on the week of the 26th. The call will be open to both Members and relevant staff from Member organizations only. The Facilitation Team and Co-Chairs will organize the call and distribute an invitation.
- A 90-minute call following the March 19th filing will also be held for IOUs to brief interested CAEECC Members on the filing and answer questions (in preparation for Members filing their own comments at the CPUC if they so choose).

APPENDIX A:

CAEECC Members present at Coordinating Committee Meeting #15 (including afternoon session on Standard and Negotiable Contract Terms):

Margie Gardner, California Efficiency and Demand Management Council (CEDMC)
Doug Avery, California Advanced Lighting Control Training Program (CalCTP)
Alice Stover, Marin Clean Energy (MCE)
Athena Besa, San Diego Gas and Electric (SDG&E)
Jenny Berg, Bay Area Regional Energy Network (BayREN)
Bernie Kotler, Statewide Labor Management Cooperation Committee (LMCC)
Dave Dias, Sheet Metal Workers Local 104
Lara Ettenson, Natural Resources Defense Council (NRDC)
Meghan Dewey, Pacific Gas and Electric (PG&E)
Mike Campbell, Office of Ratepayer Advocates (ORA)
Erin Brooks, Southern California Gas (SCG)
Cody Coecklenbergh, Lincus
Courtney Kalashian, San Joaquin Valley Clean Energy Organization (SJVCEO)
Alejandra Tellez, County of Ventura
Brian Samuelson, California Energy Commission (CEC)
Kate Kriozere, Small Business Utility Advocates (SBUA)

CAEECC Members joining by phone for Coordinating Committee Meeting #15:

Shelby Gatlin, CalCERTS
Matt Evans, Southern California Edison (SCE)
Lindsey Hawes, Center for Sustainable Energy (CSE)
Demetra McBride, Southern California Regional Energy Network (SoCalREN)
Jessie Denver, City of San Francisco

CAEECC Members present at Working Group Meeting on Standard and Negotiable Contract Terms:

Michelle Vigen, California Efficiency and Demand Management Council (CEDMC)
Meghan Dewey, Pacific Gas and Electric (PG&E)
Athena Besa, San Diego Gas and Electric (SDG&E)
Courtney Kalashian, San Joaquin Valley Clean Energy Organization (SJVCEO)
Bernie Kotler, Statewide Labor Management Cooperation Committee (LMCC)
Dave Dias, Sheet Metal Workers Local 104
Lara Ettenson, Natural Resources Defense Council (NRDC)
Meghan Dewey, Pacific Gas and Electric (PG&E)
Mike Campbell, Office of Ratepayer Advocates (ORA)
Erin Brooks, Southern California Gas (SCG)

CAEECC Members joining by phone for Working Group Meeting on Standard and Negotiable Contract Terms:

Matt Evans, Southern California Edison (SCE)
Brian Samuelson, California Energy Commission (CEC)
Alejandra Tellez, County of Ventura
Cody Coecklenbergh, Lincus
Margie Gardner, California Efficiency and Demand Management Council (CEDMC)