

**Coalition for Energy Efficiency Comments
on the IOU Third Party Contract Term Proposal**

This document provides the Coalition for Energy Efficiency’s (“CEE”) response to the investor-owned utility (IOU) draft proposed standard and negotiable contract terms. CEE’s members include: (1) BlueGreen Alliance; (2) Sierra Club California; (3) California Community Colleges Chancellor’s Office; (4) the Coalition for Clean Air; (5) Joint Committee on Energy and Environmental Policy; (6) Coalition of California Utility Employees; (7) IBEW-NECA California State Labor Management Cooperation Committee; (8) the California Labor Federation; (9) Western States Council of Sheet Metal, Air, Rail and Transportation Workers; (10) California State Pipe Trades Council; (11) Operating and Stationary Engineers, locals 39 and 501; (12) Avery Energy Enterprise; and (13) Cal SMACNA (California Association of Sheet Metal and Air Conditioning Contractors, National Association).

CEE appreciates the opportunity to provide comments on the investor-owned utilities’ (“IOU”) proposed third party contract terms for energy efficiency programs. We believe that the IOUs’ initial proposal represents a step in the right direction, particularly with respect to ensuring workforce qualification requirements are established at the outset of the contracting process. However, we have concerns that the IOUs’ proposed contract terms are inconsistent with the direction in the Commission’s Decision 18-01-004 and will fail to achieve the underlying purpose of worker access and qualification requirements. With respect to diverse and disadvantaged workers, the proposal merely proposes a definition for this term, but fails to connect the definition of disadvantaged worker to any contracting requirements for providing disadvantaged workers access to the jobs created by the contract. For workforce standards, contract terms must be more prescriptive and incorporate experience requirements to be effective. Each of these points is addressed in more detail below.

I. Standard Contract Terms

CEE recommends the following refinement to the proposed standard contract terms for contractor safety requirements:

For safety requirements, we propose including an additional requirement that during the term of the agreement, the contractor shall cause each of its employees or subcontractors performing any services to:

(f) Ensure that all construction workers installing program-supported energy efficiency measures are OSHA-10 hour General Industry Safety and Health Certified and at least one construction worker on the jobsite is OSHA 30-hour General Industry Safety and Health Certified.

In addition, CEE agrees with comments made at the CAEECC workshop that the standard contract terms requiring background checks are overly broad. Categorical prohibition of all persons convicted of the crimes listed, without further assessment of the conviction and its relation to the job to be performed, may lead to discriminatory practices in violation of AB 1008 or other state employment laws.

II. Disadvantaged Worker Definition and Diverse and Disadvantaged Business & Employee Terms

In Decision 18-01-004, the California Public Utilities Commission (“CPUC”) ordered the investor owned utilities (“IOUs”) to:

- (1) Propose a definition of diverse and disadvantage communities.¹
- (2) Propose a goal to “include in the metrics for tracking the business plan results generally, specifically for third party contractors.”²
- (3) Propose standard contract terms and conditions addressing diverse and disadvantaged businesses and employees, including small businesses, if applicable.³

A. Disadvantaged Worker Definition

The IOUs’ proposed definition of “disadvantaged worker” is overly narrow and fails to adequately capture those individuals that face barriers to employment for reasons other than where they live. By focusing solely on zip codes, the proposed definition unnecessarily excludes many disadvantaged workers, including veterans and the disabled. This not only unnecessarily excludes these types of disadvantaged workers, it also means that contractors that collaborate with programs to provide access to veterans or to the disabled, for example, would be incentivized to drop these collaborations to instead focus solely on the disadvantaged populations that fall under the proposed IOU definition.

CEE has worked with a broad group of stakeholders to combine the IOU proposed definition with the definition proposed by CEE at the CAEECC workshop (and to incorporate additional feedback and suggestions made to the CEE by other disadvantaged worker groups). A call is scheduled for next week with the IOUs and interested stakeholders to discuss the definition of disadvantaged workers, at which time we expect this definition to be further refined.

Disadvantaged Worker Definition

A disadvantaged worker shall meet one or more of the following definitions:

- A. An individual who lives in an area designated by the California EPA as “Disadvantaged Communities” pursuant to SB 525 (De Leon).

¹ Id. at 41, 63.

² The Commission’s specific direction as to the requirement to propose metrics and goals for diverse and disadvantaged workers is somewhat unclear. In the order, the IOUs are directed to include the motion “*a metric* for tracking progress toward a goal.” Id. at p. 63 (italics added). However, in the discussion, the Commission directed the utilities “to propose a definition, *as well as a goal*, that we may include in the metrics for tracking of the business plan results generally, specifically for third party contractors.” Id. at p. 41 (italics added).

³ Id. In the Decision, the IOUs were specifically ordered to select one company from among them to file a motion for approval of a standard contract and to include standard terms and conditions that address (1) eligibility requirements, (2) safety requirements, (3) the dispute resolution process, and (4) the termination process. With regard to all other terms, including diverse and disadvantaged business and employee terms, the IOUs were ordered to include “placeholder terms.” Id. at p. 63.

- B. An individual who lives in a zip code whose CalEnviroScreen socioeconomic characteristics meet at least one of the following factors:
1. **Educational Attainment:** Percent of the population over age 25 with less than a high school education.
 2. **Housing Burdened Low Income Households:** Percent of households in a census tract that are both low income (making less than 80% of the HUD Area Median Family Income) and severely burdened by housing costs (paying greater than 50% of their income to housing costs).
 3. **Linguistic Isolation:** Percent limited English-speaking households.
 4. **Poverty:** Percent of the population living below two times the federal poverty level
 5. **Income:** Median household incomes at or below 80 percent of the statewide median income or with median household incomes at or below the threshold designated as low income by the Department of Housing and Community Development’s list of state income limits adopted pursuant to Section 50093.
 6. **Unemployment:** Percent of the population over the age of 16 that is unemployed and eligible for the labor force.
- C. An individual:
1. Living in a household with an income at or below 80 percent of the statewide median income or with median household incomes at or below the threshold designated as low income by the Department of Housing and Community Development’s list of state income limits adopted pursuant to Section 50093, or
 2. Facing barriers to employment (e.g., veterans, those with disabilities, minority, homeless, foster youth who have aged out of the system or are emancipated, chronically unemployed, formally incarcerated etc.), or
 3. Referred by a partnering organization that has a proven track record of training and providing career opportunities to disadvantaged workers.

B. Diverse and Disadvantaged Business and Employee Terms

The Commission directed the IOUs to propose standard contract terms and conditions addressing diverse and disadvantaged businesses *and employees*, including small businesses, if applicable.⁴ The Commission also directed the IOUs to propose a goal and metric for tracking the inclusion of diverse and disadvantaged workers in third party contracts.⁵ While the IOU proposes language to address diverse and disadvantaged business *owners*, it fails to propose negotiable contract terms that address access for disadvantaged workers. The IOUs also fail to include any proposed metrics or goals for disadvantaged business and worker access. As a result, the current proposal is inconsistent with the Commission’s direction on worker access provisions.

The IOU proposal focuses solely on the language of CPUC General Order 156 and the established policy that businesses owned by women, minority, disabled veteran and LGBT persons shall have the maximum practicable opportunity to participate in the performance of utility contracts. Not only does this policy already exist, it is directed at business *owners* only, not the workers themselves.

⁴ D.18-01-004, pp. 41, 64.

⁵ Id. at pp. 41, 63.

The IOUs' proposed contract terms also fail to incorporate the proposed definition of disadvantaged workers. The Commission directed the IOUs to propose a definition so that it may be incorporated in the contract requirements. In its current form, the IOUs have developed a proposed definition, but fail to connect that definition to any contract terms.

CEE recommends that the following language be added to the IOUs proposed contract terms for diverse and disadvantaged workers:

- A. In the Implementation Plan, [third party] shall include a section describing the manner by which [third party] will support providing disadvantaged workers' access to the jobs created by the program, such as through the adoption of workforce diversity and inclusion goals or entering into employment partnerships with state-certified apprenticeship programs, community colleges, or other organizations that have a proven track record of training and providing career opportunities to disadvantaged workers.

- B. Where the program provides incentives, rebates, subsidies or other assistance directly to contractors or employers of contractors, or engages, pre-qualifies or recommends specific contractors for the installation of a program-supported energy efficiency measure, [third party] shall reserve at least 50% of the funding for this assistance to energy efficiency projects installed by contractors that demonstrate a commitment to provide career pathways to disadvantaged workers by:
 - 1. Entering into a collaboration agreement,⁶ job-opening notice-and-interview-opportunity agreement, community workforce agreement, community benefits agreement, labor agreement, or similar mechanism with an organization that has a proven track record of training and providing career opportunities to disadvantaged workers, including, but not limited to, community colleges, multi-craft core curriculum pre-apprentice programs, or apprenticeship programs that are approved by the California Division of Apprenticeship Standards and required to comply with the State of California Plan for Equal Opportunity in Apprenticeship; **and**
 - 2. Adopting an inclusion goal to make a good faith effort that at least 20 percent of all new hires shall be composed of disadvantaged workers. A good faith effort to meet inclusion goals shall not require a contractor to take any action that would violate a collective bargaining agreement.

- C. During the duration of the contract, [third party] shall track which contractors have demonstrated a commitment to provide career pathway opportunities to disadvantaged workers and shall provide an annual report to [IOU] describing its

⁶ CEE's original proposal referred to these as "hiring agreements," but discussions with IOUs and stakeholders suggested that the term hiring agreement was unclear and not necessarily accurate for all types of the listed agreements. Accordingly, we replaced that term with "collaboration agreement" and "job-opening notice-and-interview-opportunity agreement."

compliance with [section above] and the progress the program has made to support participation by disadvantaged workers.

Additionally, CEE recommends that the IOUs present the following as a metric and goal for tracking diversity in third party contracts:

Metric: The percentage of energy efficiency program funding that goes to energy efficiency measures installed by contractors that have demonstrated a commitment to provide career pathways to disadvantaged workers.

Goal: By 2021, 25 percent of all energy efficiency program funding goes to energy efficiency measures installed by contractors that have demonstrated a commitment to provide career pathways to disadvantaged workers.

III. Workforce Qualifications and Standards

A. General Comments

As discussed at the CAEECC workshop, CEE firmly believes that proposed workforce standards must be prescriptive and incorporate experience requirements to be truly effective. Simply relying on third party implementers to set their own workforce standards is not any different from the IOUs current practice, which has failed to ensure quality installation by adequately trained workers. Third parties have an inherent economic incentive to propose the lowest cost workforce standards, rather than the lowest-cost effective workforce standards.

CEE agrees with the IOU proposal to require that workforce standards be identified during the proposal review and contracting stage. We also agree with the IOUs' agreement at the CAEECC workforce that proposed workforce standards should be reviewed by the IE and PRG (and that the IE should have sufficient energy efficiency program expertise to evaluate these proposals). However, prescriptive standards with hands-on training and experience requirements should be imposed on installers of HVAC measures and lighting control measures due to the studies showing that poor installation is common and that the workforce installing these measures is undertrained and underqualified. Prescriptive skilled and trained workforce standards should also be imposed where appropriate due to the size of the project. Without effective, prescriptive standards, ratepayer money will be wasted. We proposed contract terms that would address these issues at the CAEECC workshop. We provide them again here with some modifications based upon the IOU proposal.

B. CEE Proposed Contract Terms for Workforce Standards

Workforce Qualifications and Quality Installation Requirements. At all times during the performance of the Work, Implementer shall be in compliance with, and shall cause its employees, agents, representatives, and subcontractors and all other persons provided funding by the Implementer for work to be in compliance with, the following workforce qualifications, certifications, standards and requirements:

[As part of its bid, each Contractor bidder will be required to propose verifiable and effective workforce standards for each sector and/or program that would reduce the risk of lost energy savings from poor installation, modification or maintenance of energy efficiency measures. This includes identifying all applicable workforce installer standards, including any measure-specific skills certification requirements and any applicable broader occupational training and experience requirements, such as apprenticeship training. This contract term shall incorporate these standards as requirements for persons performing installation work pursuant to the program.]

If compliance with an applicable standard is not proposed by a bidder, the bidder must provide a written justification for that determination and an assessment of the reasonable worst-case impact that the lack of compliance with the identified standard could have on the Program's energy efficiency outcomes and cost-effectiveness assumptions. Concern over potential disruption in workforce availability or contractor participation shall not be grounds for not requiring verifiable and effective workforce standards where such disruption can be addressed by requiring an annually-increasing percentage of incentive program participants to comply.

- 1. **For Heating, Ventilation, and Air Conditioning (HVAC) Energy Efficiency Programs or Project:** Where a program supports installation, repair, modification or maintenance of HVAC energy efficiency measures, the standards included in the contract terms shall require (in addition to any measure-specific certification or training requirements) this work to be performed by workers with five (5) or more years of experience installing HVAC systems or apprentices currently enrolled in or having completed an applicable federal or California state apprenticeship program. Installers of HVAC measures will thus be required to meet both a minimum experience requirement and a minimum certification/training requirement.*
- 2. **For Advanced Lighting Control Programs or Projects:** Where a program supports installation, repair, modification or maintenance of advanced lighting control measures, the standards included in the contract terms shall require this work to be performed by workers that are California Advanced Lighting Controls Training Program (CALCTP) certified-installers. Advanced lighting control measures shall include dimmers, occupant and vacancy sensors, photo-sensors, relay modules, scheduling controls, demand response controls, daylight harvesting controls, communication-based control devices such as demand response and real time pricing, and control modules that interface with software programs.*
- 3. **Skilled and Trained Workforce Requirement for Large Projects.** Where a program provides an individual project, or group of projects within the same building or building complex, more than [\$20,000?] total in ratepayer-funded assistance for the installation, modification, repair or maintenance of energy efficiency measures, the program shall require this work to be performed by a "skilled and trained workforce" as that term is defined in the California Public Utilities Code section 388.2.]*

C. Comments on Proposed List of Potential Standards

CEE is concerned about the IOUs proposed list of potential standards that could be adopted. First, the list is inherently misleading because it is necessarily neither comprehensive nor vetted. Second, it includes many standards and certifications that are either not relevant to installation or provide little evidence of worker qualification on their own. Third, it creates a false equivalency between the certifications listed when they actually vary widely in content, quality and effectiveness. Fourth, it will lead third parties to assume that all that is needed to comply with this contractual requirement is to choose a standard on the list, rather than identifying the most appropriate available workforce standard requirements for the measure being proposed. CEE believes the list is unnecessary, unduly complicates efforts to adopt these proposed contract terms and would create more confusion than assistance.

Notwithstanding this general objection to the list approach, CEE has asked several stakeholders and technical experts to review the actual standards contained on the list, including the U.C. Davis California Lighting Technology Center. Because we have not received responses in time for this submittal, CEE will supplement these comments next week when it gets these responses.

Submitted By

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