**California Energy Efficiency Coordinating Committee**

Coordinating Committee Meeting #15

February 15, 2018 10:00 to 5:00

NRDC, 111 Sutter Street @ Montgomery, 21st Floor, San Francisco

Facilitator: Dr. Jonathan Raab, Raab Associates

*\*\*The following terms are drafts and will continue to be revised based on stakeholder feedback and IOU discussions. The final terms will be filed as a motion in March. Stakeholders will have an opportunity to comment further at that time\*\**

**Session 1: Standard Contract Requirements and Process**

1. **Eligibility (Type of Business, License Requirements, Insurance and Bonding Requirements, Etc.)**
2. License, Insurance and Bonding Requirements. At all times during the performance of the Services, Contractor represents, warrants and covenants that it has and shall, and shall cause each of its subcontractors for the Services to, obtain and maintain, at its sole cost and expense, (a) all required licenses and registrations required for the operation of its business and the performance of the Services, including, to the extent applicable, State of California general contractor and electrical contractor licenses, (b) all bonding requirements of the California State License Board and any other payment and/or performance assurances as may be requested by Company, and (c) the insurance coverage requirements specified in [*Insert IOU-specific Appendix containing insurance requirements*].
3. Evidence of Licenses. Copies of such licenses and registrations shall be promptly provided to Company at the request of Company.
4. Good Standing. Contractor represents and warrants that (a) it is a [*corporation/limited liability company/partnership*] duly organized, validly existing and in good standing under the laws of the State of [*Insert State of organization*], and (b) it has full power and authority to execute, deliver and perform its obligations under this Agreement and to engage in the business it presently conducts and contemplates conducting, and is and will be duly licensed or qualified to do business and in good standing under the laws of the State of California and each other jurisdiction wherein the nature of its business transacted by it makes such licensing or qualification necessary and where the failure to be licensed or qualified would have a material adverse effect on its ability to perform its obligations hereunder.
5. Financial Statements. Contractor shall deliver quarterly and/or annual financial statements as may be reasonably requested by Company from time to time. Such financial statements shall be for the most recent accounting period and prepared in accordance with generally-accepted accounting principles.
6. **Safety Requirements**
7. Safety. During the term of this Agreement, Contractor represents, warrants and covenants that it shall, and shall cause each of its subcontractors performing any Services to:
   1. abide by all federal and state Occupational Safety and Health Administration requirements and other applicable federal, state, and local rules, regulations, codes and ordinances to safeguard persons and property from injury or damage;
   2. abide by all Company security procedures, rules and regulations and cooperate with Company security personnel whenever on Company’s property;
   3. abide by Company’s standard safety program contract requirements as may be provided by Company to Contractor from time to time;
   4. provide all necessary training to its employees and subcontractors about the safety and health rules and standards required under this Agreement; and
   5. have in place an effective Injury and Illness Prevention Program that meets the requirements all applicable laws and regulations, including but not limited to Section 6401.7 of the California Labor Code.

Additional safety requirements (including Company’s standard safety program contract requirements) are set forth elsewhere in the Agreement, as applicable, and in Company’s safety handbooks as may be provided by Company to Contractor from time to time.

1. Background Checks.
   1. Contractor hereby represents, warrants and certifies that any personnel of Contractor or subcontractor, and their representatives and agents, having or requiring access to Company’s assets, premises, customer property, data or systems (“Personnel”) shall have successfully passed a (a) pre-employment background screening on each such individual, which screening may include, among other things, a screening of the individual’s educational background, employment history, valid driver’s license and clean driving record, and court record for the seven (7) year period immediately preceding the individual’s date of hire, and (b) a drug screen, which may include the Substance Abuse and Mental Health Administration’s five categories of drugs, also known as the “SAMHSA 5”.
   2. Notwithstanding the foregoing, in no event shall Contractor permit any Personnel to have one or more convictions for violent or sex offenses, crimes against children, domestic violence, fraud, theft (including but not limited to identity theft), embezzlement, any felonies during the seven (7) year period prior to the Effective Date, or two or more DUI’s in the three (3) year period prior to the Effective Date (each a “Serious Offense”).
   3. Contractor shall maintain documentation related to such background and drug screening for all Personnel and make it available to Company for audit if required pursuant to the audit provisions of this Agreement.
   4. Contractor shall notify Company if any of its Personnel is charged with or convicted of a Serious Offense during the term of this Agreement.
2. Fitness for Duty. Contractor shall ensure that all Personnel report to work fit for their job. Personnel may not consume alcohol while on duty and/or be under the influence of drugs or controlled substances that impair their ability to perform their work properly and safely. Contractor shall, and shall cause its subcontractors to, have policies in place that requires their employees report to work in a condition that allows them to perform the work safely. For example, employees should not be operating equipment under medication that creates drowsiness.
3. **Dispute Resolution Process**
4. Disputes. Either Party may give the other Party written notice of any dispute which has not been resolved at a working level. Any dispute that cannot be resolved between Contractor’s contract representative and Company’s contract representative by good faith negotiation efforts shall be referred to a [*Insert IOU-specific level of authority*] of Company and an officer of Contractor for resolution. Within 20 days after delivery of such notice, such persons shall meet at a mutually acceptable time and place, and thereafter as often as they reasonably deem necessary to exchange information and to attempt to resolve the dispute. If Company and Contractor cannot reach an agreement within a reasonable period of time, Company and Contractor shall have the right to pursue all rights and remedies that may be available at law or in equity. All negotiations and any mediation 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.
5. Governing Law. This Agreement shall be governed by the internal laws of the State of California, with reference to its conflict of laws principles.
6. Venue. In the event of any litigation to enforce or interpret any terms of this Agreement, such action shall be brought in a Superior Court of the State of California located in [*Insert IOU-specific County*] (or if the federal courts have exclusive jurisdiction over the subject matter of the dispute, in the U.S. District Court for the [*Northern/Central/Southern*] District of California), and the parties hereby submit to the exclusive jurisdiction of such courts.
7. **Termination Process**
8. Termination for Convenience. Company shall have the right to terminate this Agreement or all or any portion of the Services at any time, in its sole convenience, exercisable in its sole and absolute discretion and without cause, upon ten (10) business days’ written notice to Contractor. Upon Company’s exercise of such termination rights, the following shall apply:
   1. Upon receipt of Company’s notice for termination of convenience, Contractor shall immediately stop performing the Services and bring the Services to an orderly conclusion as directed by Company. Contractor shall vacate Company’s worksite but shall not remove any material, plant or equipment thereon without the approval of Company. Company, at its option, may take possession of any portion of the Services paid for by Company.
   2. Company shall be liable to Contractor only for the compensation earned on Services satisfactorily performed prior to the effective date of termination, plus documented and verifiable costs (such as demobilization costs) reasonably incurred by Contractor in terminating the Services. Contractor shall mitigate its damages so as to minimize its claim, if any, against Company.
   3. Notwithstanding anything contained in this Section [\_\_\_], in no event shall Company be liable for lost or anticipated profits or overhead on uncompleted portions of the Services. Contractor shall not enter into any agreement, commitments or subcontracts which would incur significant cancellation or termination costs without prior written approval of Company, and such written approval shall be a condition precedent to the payment of any cancellation or termination charges by Company under this Section [\_\_\_]. Also as a condition precedent to the payment of any cancellation or termination charges by Company under this Section [\_\_\_\_], Contractor shall have delivered to Company any and all reports, drawings, documents and deliverables prepared for Company before the effective date of such cancellation or termination.
   4. The provisions of this Section [\_\_\_] shall be Contractor’s sole remedy resulting from Company’s termination for convenience hereunder.
9. Termination for Cause. Company may terminate this Agreement in the event of an Event of Default of Contractor by providing written notice thereof to Contractor. Company’s termination right hereunder shall be without prejudice to and in addition to any other rights and remedies that may be available to Company at law or in equity or in this Agreement as a result of such Event of Default. An “Event of Default” of Contractor shall mean the occurrence of any one or more of the following:
10. Contractor becomes insolvent, generally does not pay its debts as they become due, makes a general assignment for the benefit of creditors, or commences any action seeking reorganization or receivership under any bankruptcy, insolvency, reorganization or similar law for the relief of creditors or affecting the rights or remedies of creditors generally;
11. Any legal action is made or commenced against Contractor which, in Company’s opinion, may interfere with the performance of the Services;
12. Contractor commits any material act of dishonesty, fraud, misuse of funds, or misrepresentation of Company’s administration of this Agreement;
13. Company becomes aware of a public safety issue arising out of or related to Contractor’s administration or performance of this Agreement;
14. Any representation or warranty made by Contractor herein is materially false or misleading when made;
15. Contractor assigns, subcontracts, or transfers this Agreement or any right or interest herein except in accordance with Section [\_\_];
16. Contractor fails to maintain the insurance coverage required of its in accordance with Appendix [\_\_];
17. Contractor fails to make payment to Company as required under this Agreement, and such failure continues for five (5) days;
18. Contractor fails to achieve [*Insert Minimum Performance Requirements*]; or
19. Contactor fails to perform or observe a provision of this Agreement not otherwise explicitly addressed in this Section [\_\_\_], and such failure continues for thirty (30) days after receiving notice from Company with respect thereto (except that such thirty (30)-day limit shall be extended if (i) curing such failure reasonably requires more than thirty (30) days, (ii) Contractor commences such cure within such thirty (30)-day period and diligently prosecutes such cure, and (iii) such cure is accomplished within sixty (60) days after receiving such default notice from Company).
20. Termination/Modification for CPUC Order. This Agreement shall be subject to changes, modifications, or termination by order or directive of the California Public Utilities Commission. (“CPUC”). The CPUC may from time to time issue an order or directive relating to or affecting any aspect of this Agreement, in which case Company shall have the right to change, modify or terminate this Agreement in any manner so as to be consistent with such CPUC order or directive.

**Session 2: Negotiable Contract Terms—Disadvantaged Worker + Diverse and Disadvantaged Business & Employee Terms**

*Disadvantaged Worker Definition*

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. **Unemployment:** Percent of the population over the age of 16 that is unemployed and eligible for the labor force.

*Diverse and Disadvantaged Business & Employee Terms*

It is Company’s policy that small and diverse businesses shall have the maximum practicable opportunity to participate in providing the goods and services purchased by Company. Small and diverse businesses include Small Business Enterprises (“SBEs”); Women, Minority, and Disabled Veteran Business Enterprises (“WMDVBEs”); and Lesbian, Gay, Bisexual, and Transgender Business Enterprises (“LGBTBEs”).

Diverse Business Enterprise (DBE)

Per CPUC General Order 156, Contractor must supply information about their DBE status and subcontracting plans. Contractor agrees to comply, and to require all Subcontractors to comply, with Company’s Supply Chain Responsibility Policy as may be provided by Company from time to time, the terms of which shall be incorporated in this Agreement by this reference. Contractor shall provide a copy of such Supply Chain Responsibility Policy to each Subcontractor.

Local Hiring. [To be discussed]