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# Purpose of Memo

This memo[[1]](#footnote-1) is submitted in response to Decision 16-08-019 that invited a proposal for a “procurement style approach to selection of third-party programs, with use of procurement review groups and/or independent evaluators such as those employed in supply-side solicitations by electric utilities under Commission oversight.”[[2]](#footnote-2) While the California Energy Efficiency Coordinating Committee (CAEECC) members reached consensus on many aspects of the approach to use an Energy Efficiency Procurement Review Group (EE-PRG), there are a number of details that were not agreed upon and require Commission direction.

The CAEECC members agree that the Program Administrator (PA) third-party program procurement process should be overseen by an EE-PRG and independent evaluator (IE) that would review the PA’s competitive bidding process and provide an opinion to the EE-PRG on whether the process was conducted in accordance with bidding protocols, CPUC policies, and the approved Business Plan (BP). This process would be separate from the CAEECC process to avoid conflict of interest concerns but could report progress to the CAEECC as needed. The following sections outline the consensus proposal for procurement oversight by the EE-PRG and IE, as well as the key aspects of the proposal that remain unresolved.[[3]](#footnote-3)

# Rationale for a Revamped EE-PRG and IE

The current Peer Review Group was developed to ensure a fair and transparent bidding process but is not set up to enable effective and meaningful oversight to review numerous Request for Proposals (RFPs), third party program proposals, and draft contracts to ensure they are in line with Commission direction or the approved Business Plans. Given the recent decision requiring the expansion of the third party portion of the portfolio from 20% to a minimum of 60% by the end of 2020,[[4]](#footnote-4) a few CAEECC members proposed to develop a more robust stakeholder participation process to aid in this transition.

The EE-PRG process would be assisted by an IE to ensure a fair solicitation process that complies with existing policies,. As NRDC and ORA noted, current members of the PRG lack sufficient expertise and resources to devote the time needed for in depth reviews that independent oversight requires. Also, the added expertise of an IE can be helpful to both PAs and the EE-PRG in expediting reviews through facilitating common approaches and processes across PAs.

# Key Players Participating in a Third Party Solicitation Review

Regardless of which option outlined below is pursued by the Commission, the following actors would be involved in the process:

1. Energy Efficiency – Procurement Review Group (EE-PRG): Membership will be open to non-financially interested stakeholders (parties or otherwise) who meet specified criteria.[[5]](#footnote-5) Any participants of the EE-PRG would be ineligible to bid on any solicitation in which the EE-PRG is active. EE-PRG members must agree to execute an appropriate non-disclosure agreement and commit to review and make recommendations concerning proposed contracts and procurement processes on an expedited basis.
2. The Independent Evaluators (IEs): The IEs (or pool of IEs) would be hired (see below for options) and have significant experience in managing energy efficiency program solicitation processes as well as in understanding energy efficiency portfolios and programs. The IEs would be responsible for reviewing the solicitation process (see below for more detail) and presenting their opinion to the EE-PRG regarding whether the process was compliant with Commission direction, stated bidding protocols, and the approved Business Plans.
3. CPUC: Energy Division would maintain their current authority and actively participate in the EE-PRG.
4. Public: The public would not have access to these meetings, but could learn of high level progress through the CAEECC forum and through annual IE reports.

# Scope of the EE-PRG and IEs[[6]](#footnote-6)

The EE-PRG process would entail a set schedule of regular meetings to discuss progress on and IE review of (1) solicitation plans, (2) proposed solicitations, (3) RFP protocols and product criteria, (4) summaries of review, assessment, and scores of proposals,[[7]](#footnote-7) and (5) final selection for third party programs (e.g., statewide or otherwise). The meeting schedule would be established in advance and be structured in such a way to balance the need for a timely solicitation process to enable continual energy efficiency program deployment while providing sufficient opportunity for stakeholder involvement and Energy Division oversight.

The IE’s role would include the following:

1. Review the PA’s RFP protocol, proposed RFPs, and proposed review criteria to ensure consistency with the approved BP, Commission guidance, and state policy. Review would be based on an agreed-upon checklist that would include, but not be limited to, the following example items:
	1. PAs’ solicitation protocol;
	2. Schedule;
	3. Proposed budgets;
	4. Prequalification requirements as appropriate;
	5. Scope of work;
	6. Performance and EM&V requirements;
	7. Target cost-effectiveness (e.g., TRC, levelized cost, etc.);
	8. Criteria by which the solicitations will be evaluated and each criterion’s respective weighting;
	9. Protocol language; and
	10. RFP distribution systems or lists to be used.

These items would be reviewed to ensure that the solicitation was fair and in compliance with the stated solicitation strategies as put forth by the PAs’ Business Plans as well as with relevant Commission direction. This information would be presented to Energy Division and the EE-PRG.

1. Summarize and assess the PA’s solicitation results to ensure the solicitation was fair and competitive, that planned review methodologies for proposals were applied correctly, and the selection of a final bidder complied with protocols that were defined in IV.A. This typically involves the IE evaluating each bid simultaneously with the PA. If discrepancies or issues emerged related to the PA’s final selection, the IE would identify the items and the process by which the ultimate decision was made. This information would be presented to Energy Division and the EE-PRG at the end of the solicitation process.
2. Provide an annual written assessment to Energy Division and the EE-PRG of the overall results of the solicitation processes concluded within the past calendar year (e.g., how many parties responded to each bid, what was the range of scoring results, disqualified respondents, with possible suggestions for future enhancements and other information requested by the EE-PRG.). The IE would also submit recommendations (if any) for improvements to the solicitation process. At the onset, this could be done quarterly to help inform improvements for the solicitation process.
3. Coordinate with Energy Division staff by having Energy Division actively participate on the EE-PRG and review the IE reports and presentations.

The EE-PRG role would include the following:

1. Review the PA’s procurement strategy.[[8]](#footnote-8)
2. Provide timely input into the draft RFP language and criteria used for scoring.[[9]](#footnote-9)
3. Review presentations and annual assessments by the IE regarding fairness of the process and whether the PAs complied with Commission direction, stated bidding plans, the approved Business Plans, and state policy.
4. Provide recommendations to each utility based on the review.
5. Review and comment on annual IE reports.

# Process Options

1. **Hiring an IE**

As noted above, the IEs would need to have sufficient expertise in the area of energy efficiency program and policies, management in bidding processes, as well as with managing an extensive multi-stakeholder process.

* 1. Solicitation process to develop a pool of IEs (whether the contract is held by CPUC or an IOU): Those entities on the EE-PRG who would like to participate should be able to participate in the solicitation and review process for the selection of IEs. Any participant on the selection committee would be disqualified from bidding as a potential IE.

The roles of the EE-PRG in the solicitation process for an IE would include developing the RFI/RFP language (including the scope of the position), criteria and weighting of each criterion, process, as well as reviewing the bids to enable an informed discussion of the scored results and proposed awardee.

* 1. Contracting: Three contracting options have been discussed by the CAEECC ad hoc working group without reaching consensus. The three options are:
		1. The IOUs run the solicitation process for the pool of IEs with checks and balances, including having members of the EE-PRG participate in choosing the IEs. The IOUs would hold the contract(s) with the IE(s);
		2. The Energy Division (ED) runs the solicitation process for the pool of IEs and contracts with the IEs and; or
		3. The IOUs contract with the IEs for the first two years, as described in Option 1, to allow faster implementation and then ED contracts with the IEs after the first two years or once the state contracting process for hiring the IEs is completed, whichever is later.
	2. Contract length would need to be determined (e.g., solicitation cycle, set number of years, etc.). Under Option 3, the IEs would be hired for two years by the IOUs and then (potentially) for the rest of the Business Plan length when the ED takes over the contracting.
	3. Funding source: Whether the contract is held by the Commission or an IOU, the Commission will need to determine if the PAs will need approval of IE cost recovery in rates before funding an IE or if funding is already authorized under existing decisions.
1. **Level of Review**

The purpose of the RFP, proposals, and contract review is to ensure compliance with existing Commission direction, the PA’s Business Plan, and state policy. The CAEECC reached consensus that all RFPs should be reviewed by the IEs and the EE-PRG. The CAEECC did not reach consensus on the degree to which the proposals and draft contracts are reviewed. The three options discussed include:

* 1. All proposals and draft contracts are reviewed by the IEs and the EE-PRG;
	2. Proposals and draft contracts are spot checked; or
	3. All proposals and draft contracts are reviewed for the first year. After the first year, if no problem trends have been identified, determine whether certain categories of contracts (e.g., size, length, type) should continue to be spot checked.

Other outstanding questions that may require Commission guidance include:

1. To what degree are the proposals reviewed? Would it be a full parallel scoring process to the IOU process? Or would the IE review the proposals to better assess if the IOU scoring results are reasonable?
2. What does spot checking mean? Would it be 50% of the proposals and contracts? Would it include a threshold (e.g., spot check contracts over a certain budget)? Would it involve a sampling protocol (e.g., conduct a sampling and determine whether there is 90%+ confidence in that sample size. If not, the process could result in additional reviews)?
3. **CPUC Approval of Contracts for Third Party Programs**

Currently, once the PAs go through the existing Peer Review Group process they are able to contract and proceed with program launch. A few CAEECC members proposed that after contracts are awarded they should go through an Advice Letter process. Consensus on this matter was not reached.

The following three options were discussed:

* 1. All contracts go through an Advice Letter (AL) process to provide stakeholders (not just EE-PRG) an opportunity to monitor compliance (potentially utilizing different Tier ALs for different types of contracts);
	2. Only contracts that meet a certain agreed-upon threshold (e.g., level of risk, size of project, budget, etc.) or have disagreements regarding compliance with policy within the EE-PRG/IE review process are required to go through the AL process; or
	3. PAs are allowed to contract without formal CPUC approval but stakeholders may raise concerns of non-compliance with the Commission by filing a formal motion for dispute resolution.[[10]](#footnote-10),[[11]](#footnote-11)

Additional proposals included:

1. Requiring all contracts to go through AL process, but reducing the protest period for Advice Letters without dispute (would need to identify what qualifies as dispute - e.g., non-consensus by one stakeholder, requirement for majority dispute, etc.);
2. Provide an IE checklist of the IE assessment of the process as part of the Advice Letter submission to make it easier for ED to review the submitted contracts;
3. If contracts are bundled to reduce the volume of ALs, ensure that one protest on one contract would not hold up the remaining contracts;
4. Ensure CPUC staff review the ALs in consultation with the ED staff person on the EE-PRG/IE;
5. Include sufficient leeway for contract adjustments that happen periodically (e.g., due to changes in CPUC policy) without restarting the AL process.
6. **Draft order of operations**

**Table 1: Order of Operations and Roles & Responsibilities to Ensure Compliance with Process**

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
|  | **Review of RFP draft** | **Launch solicitation** | **Review Proposals** | **Present final scoring** | **Contracting OR Advice Letter** |
| PA | PA develops RFP for IE/EE-PRG review, including: * RFP language
* Scoring criteria/weight
* List for distributing RFPs (e.g., PEPMA)
* Schedule commitment
* Planned “Bidders Conference”
 | Once EE-PRG/IE review of RFP and criteria is complete and any incongruities resolved, PA launches the RFP and holds “Bidders Conference.” | PA receive proposals and score them according to the scoring criteria. PA and IE discuss/resolve any discrepancies prior to presentation to EE-PRG.*\*Need to update once it is determined if IE scores alongside PA* | PA presents selected offers to EE-PRG, including any justification for selection outside of strict scoring ranks.(As noted below, the IE is present at PRG meetings)  | *\*This column to be filled in once there is a decision on which option to pursue.* |
| IE | Reviews the PA’s proposed solicitation protocols, including scoring criteria, list of where RFPs will be posted or sent to, RFP schedule, planned “Bidders Conference.” Ensures they are consistent with Commission policies, guidance, and business plans. | n/a | IE determines whether the solicitation was conducted fairly and ensures scoring is consistent with criteria.*\*This will need to be updated based on which option is pursued (e.g., IE reviews all proposals, spot checks, or other)* | IE is present at EE-PRG meeting where PA presents to stakeholders and CPUC. Provides opinion of process and recs as needed. *\*Update scope of report once details of are determined* | *\*This column to be filled in once there is a decision on which option to pursue.* |
| EE-PRG | Reviews proposed RFP protocol & recommendation of IE. Raises any issues or if none, the process moves along. | n/a | n/a | The EE-PRG raises concerns based on IE report OR if no concerns, the process continues. | *\*This column to be filled in once there is a decision on which option to pursue.* |

1. This document was drafted by an *ad hoc* CAEECC working group and incorporated feedback from the full CAEECC membership as well as the public. The CAEECC ad hoc working group is made up of: ORA, CEEIC, NRDC, The Coalition for Energy Efficiency, PG&E, SCE, SCG, and SDG&E. A version of this document was discussed at a CAEECC meeting on 12-7-16 with verbal comments made by a number of CAEECC members. Written comments were submitted to the CAEECC facilitator by: ClearResult, the Joint Local Government CAEECC members, the Coalition for Energy Efficiency, the Joint IOUs, and CEEIC. [↑](#footnote-ref-1)
2. D.16-08-019, p.75. In response to a proposal to use procurement review groups and/or independent evaluators: *“We encourage stakeholders to continue to discuss these options and bring forward a workable proposal to the Commission as part of the business plans in the rolling portfolio process or the IDER proceeding, if one can be agreed upon.”* and Conclusion of Law 63, p.106. *“We should look favorably on proposals for peer review groups or independent evaluators in the context of third-party selection, but do not have enough record in this proceeding to adopt the structure. Ongoing work on these issues should occur in the integrated resource planning and/or IDER rulemakings.”* As noted in COL 63, this proposal applies to the third party programs as defined by D.16-08-019 Ordering Paragraph 10, p.111. This could include statewide programs that are put out for bid in line with definition. However, it does not include those contracts needed for non-third party programs, such as professional services. In addition, this process should not apply to change orders that are within approved contract terms. [↑](#footnote-ref-2)
3. The CAEECC members understand there are similar ongoing processes that the Commission may consider aligning with, including the “Decision Addressing Competitive Solicitation Framework and Utility Regulatory Incentive Pilot” (D.16-12-036 in R.14-10-033). The CAEECC ad hoc group also discussed the possibility of using the existing supply-side procurement review group for this process but consensus to do so was not reached. [↑](#footnote-ref-3)
4. D.16-10-019 p.111, Ordering Paragraph 12. [↑](#footnote-ref-4)
5. The CAEECC has not yet discussed what, if any, additional criteria should be adopted for participation in the EE-PRG. In addition, it will be necessary to ensure Intervenor Compensation direction is clear for participation in this process to ensure stakeholders are able to commit the necessary resources to these committees. [↑](#footnote-ref-5)
6. While consensus was not reached to use the existing supply side procurement review group, the CAEECC *ad hoc* working group reviewed existing direction from D.02-08-071 (p.24-25) to inform this proposal. [↑](#footnote-ref-6)
7. It is still to be determined whether the IE will score all proposals in parallel or whether they would review the summaries provided by the IOU. Regardless, the IE would have full access to all proposals and associated materials. [↑](#footnote-ref-7)
8. Note: This is currently being considered at the CAEECC to be open to the public through the appropriate CAEECC subcommittees if the information is high level enough to avoid conflict of interests. The procurement strategy review is intended to “refresh” stakeholders as to the strategy approved by the Business Plan as well as provide any supplemental information from updated analysis as appropriate. [↑](#footnote-ref-8)
9. This is in line with current Peer Review Group roles per Policy Manual v.5 p.40: “Role of PRGs. As described in D.05-01-055 and D.07-10-032, members of each PRG will be expected to: (1) oversee the development of criteria and selection of government partnership programs, (2) review the IOUs’ submittals to the Commission and assess the IOUs’ overall portfolio plans, their plans for bidding out pieces of the portfolio per the minimum bidding requirement and (3) review the bid evaluation utilized by the IOUs and their application of that criteria in selecting third-party programs.” [↑](#footnote-ref-9)
10. D.15-10-028, p.65 [↑](#footnote-ref-10)
11. For contracts held by Local Governments, they propose using their existing processes in lieu of an additional AL submission to the CPUC. [↑](#footnote-ref-11)