# Purpose

This memo sets forth a proposal for revamping the current utility Peer Review Group (PRG) into a Program Administrator (PA) Energy Efficiency Procurement Review Group (EE-PRG). This memo also discusses new proposals for approving contracts. The proposed EE-PRG would use an independent evaluator to review and provide an opinion on whether the PA’s competitive bidding process was conducted in accordance with bidding plans and CPUC policies and whether proposed procurement is in line with the approved Business Plan. This process would be separate from the CAEECC process to avoid conflict of interest concerns but could report progress to the CAEECC as needed. It will also be set up to align with other procurement review groups as appropriate and may need to be changed pending the competitive solicitation decision in R.14-10-003.

# Why

The current structure of the PRG was developed to ensure a fair and transparent bidding process but does not lend itself to an effective and meaningful oversight forum to ensure compliance with existing policies. 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,[[1]](#footnote-1) there has been strong interest in developing a more robust stakeholder participation process to provide clear compliance with existing policies and transparency for the ongoing third party bidding process.

# Who

The following are key players who would be active in an EE PRG:

1. Energy Efficiency – Procurement Review Group (EE-PRG): Non-financially interested stakeholders (parties or otherwise) would be able to join the EE-PRG if they meet the (forthcoming) criteria.[[2]](#footnote-2) Any participants of the EE-PRG would be ineligible to bid into any solicitation in which the EE-PRG is active.
2. The Independent Evaluator (IE): The IE would be hired and would have significant experience in managing third party procurement processes, and also in understanding energy efficiency portfolios and programs. Ideally there would be a pool of qualified IEs from which the PAs can choose.
3. CPUC: The CPUC staff would participate in the EE-PRG and maintain current authority. If the alternative to expand CPUC involvement into active contract approval, this would add to current CPUC staff responsibilities.
4. Public: The public would not be able to have access to these meetings, but could learn of high level progress through the CAEECC forum.

# What

This process would entail a set schedule of regular EE-PRG meetings to review solicitation plans, proposed solicitations, Request for Proposal (RFP) protocols and criteria, summaries of offer scoring, and 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 inevitable delay in the solicitation process while enabling sufficient opportunity for stakeholder involvement and Energy Division oversight.

The IE’s role would include the following (and may be augmented as needed):

1. Review the PA’s solicitation protocol to ensure consistency with the approved Business Plan, Commission guidance, and state policy. Such items to be reviewed include proposed budgets, prequalification requirements as appropriate, scope of work, performance and EM&V requirements, target cost-effectiveness (e.g., TRC, levelized cost, etc.), evaluation criteria and each criterion’s respective weight, protocol language, and RFP distribution lists to be used. Review does not include program design issues or issues of judgment about how much in compliance a particular proposal is; judgment of sufficient compliance remains with the entity responsible for executing the contract.
2. Summarize the PA’s solicitation results to ensure that the solicitation was fair and competitive, planned solicitation evaluation methodologies are applied, final selection is reasonable, and if there were discrepancies or issues related to the PA’s final selection based on the factors in A above, how was the issue decided. Per an alternative below, if there is an Advice Letter filing required for contract authorization, this report would be filed concurrently with the PA’s advice letter. If the current process is retained, no Advice Letter is required and the summary would be submitted to the EE-PRG and the Commission when finished.
3. Provide an annual written assessment to CPUC’s Energy Division and the EE-PRG of the 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 PRG.).
4. Coordinate to a reasonable degree with Energy Division staff.

CAEECC believes an initial EE-PRG “design committee” can make progress even before the Business Plans are approved. This committee would work on:

1. Establish a timeline such that this process would be ready to launch after the Commission decision on the business plans;
2. Develop the RFQ for an IE firm
3. Review draft RFP ‘scopes’ for each sector with CAEECC or subcommittee
4. Develop an initial RFP template
5. Determine a timeline of meetings post-launch; and
6. Outline meeting protocols.

# Process Proposal

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 for IE (regardless of who holds the contract): Those entities on the EE-PRG who would like to participate should allowed to be part of the solicitation and review process for the IE selection. 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 language, including the scope of the position and description of the IE pool, 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: The following table outlines the two proposals discussed by the CAEECC ad hoc working group.

[see next page for contracting option table]

**Table 1: Contracting Options**

|  |  |  |
| --- | --- | --- |
| **Options** | **Pros** | **Cons** |
| IOU holds the contract and runs the solicitation process for the pool of IEs | * Speedier process. * Allows for checks and balances of the process (e.g., through EE-PRG involvement). * Allows for and ongoing role of the EE-PRG to oversee the balance of the IE (e.g., receive deliverables before they are final, approve timecards, etc.). | * It is some stakeholders’ view that an IE would not be truly independent if they were to be under contract to the IOU or if the IOU had a role in choosing the IE, despite having checks and balances in place. |
| Energy Division (ED) holds the contract and runs the solicitation process for the pool of IEs | * The IOU would not hold the contract. | * The CA state contracting process takes an extensive amount of time. * There would not be an opportunity for an EE-PRG to be part of the selection process. * Uncertain if the EE-PRG would be able to be part of the reviewing the deliverables before they are final or other similar opportunities if the IOU is not the contract holder. |

* 1. Contract length: TBD (e.g., would the individuals or firms be hired for X amount of years or throughout the Business Plan length, etc.).
  2. Funding source: The PAs will need approval of IE cost recovery in rates before funding an IE.

1. **Level of Review**

In the last version of this document, there were three proposals regarding what level of review the IE will have on the RFP and contracting process. The purpose of the RFP and contract review is to ensure compliance with existing Commission direction and consistency of the bids with the Business Plan. The first option was to review every single RFP and contract. The second option was to spot check the process. The third option was to review every RFP and spot check the contracts. After discussion of these options in the CAEECC ad hoc working group and additional input, the following two options are presented for discussion.

**Table 2: Independent Evaluator review of RFP, proposals, and Contract Review for Compliance: Options**

|  |  |  |
| --- | --- | --- |
| **Options** | **Pros** | **Cons** |
| 1. IE Reviews all RFPs, proposals, and draft contracts. | * Highest level of transparency. | * Potentially extremely time consuming, in particular for proposal and contract review as the number of proposals and contracts could be quite large given the breadth of the needs. * Potentially extremely expensive given how many RFPs (guessing 25-75?), proposals (250-750?) and contracts (guessing 100-300?) are likely to be needed to get to a minimum of 60% third party programs by the end of 2020. * Requires ratepayer expenditure to be a second review on everything, even if all experiences during the process indicate that 100% review in all areas is unnecessary. * 100% duplicative of the solicitation processes and responsibilities already placed on the IOUs, and funded by ratepayers * There are no documented ‘compliance’ issues with prior EE solicitations, which is the purpose of the EE-PRG/IE. |
| 2. IE Reviews all RFPs and spot check proposals and draft contracts. Allows for further review if compliance issues are found in the spot checks. | * Potentially allows the process to roll out quicker, somewhat reducing concern by many that an IE would slow the process. * Less costly than the prior option. * Spot checking (with further follow-up if needed) can act as an incentive to do it right, thus reducing the risk of contracts that aren’t compliant getting through. * Allows for all RFPs (which is hopefully a manageable number) to be fully reviewed. * Spot checking contracts would allow the IE and EE-PRG to see if there is a trend or concern before investing time in an extensive review. * Still enables opportunity to “gut check” the process, with the option of expanding the spot checking if there is an identified problem. | * Not as high a level of transparency. * Potential for contracts to go through that are not in line with direction. * Depending on the number of RFPs, could still slow the initial bidding process down. |

1. **Formal CPUC Approval of Contracts?**

Currently, once the PAs go through the existing IOU-specific PRG,[[3]](#footnote-3) they are able to contract and proceed with program launch. The following three options are presented based on previous discussions: (1) all contracts go through an Advice Letter (AL) process (potentially utilizing different Tier ALs for different types of contracts), (2) only submit contracts that reach a certain agreed-upon threshold (e.g., level of risk, size of project, budget, etc.) or if there are any disagreements in the EE-PRG/IE review process on compliance with policy, and (3) continue the current process, which allows the PAs to contract without formal CPUC approval.

One issue rasied by CAEECC members is to provide an opportunity for EE-PRG members to raise concerns with a particular contract if/when the IE and EE-PRG members raised a concern in the informal process, but their input was not taken into consideration. The current process allows EE-PRG members to file a motion stating their protest as the program goes into implementation. The alternative, of having the CPUC approve all contracts, would offer an additional option to protest during the Advice Letter filing.

The current PRG process allows for EE-PRG members to file a motion to protest. As with Advice Letter approval, either pathway could create a time consuming process with a high degree of uncertainty if a party raises compliance concerns with a specific contract and the CPUC wishes to investigate that contract for reasonableness, thereby delaying the process on an unknown timeline.

To review the options, below is a summary of the Pros and Cons of contract approval options.

**Table 3: Contract Approval Process Option**

|  |  |  |
| --- | --- | --- |
| **Options** | **Pros** | **Cons** |
| 1. All contracts go through an Advice Letter Process to monitor compliance | * Provides an additional opportunity for stakeholders to raise concerns if the contracts are not aligning with the business plans. * Stakeholder process should reduce party protests, or at least expedite the protest period (no need for extensive data requests). * CPUC approval reduces PA and uncertainty about compliance issues in contracts. | * Efficiency is delivered in relatively small annual increments and individual contracts can be cancelled at relatively low cost compared to generation. So any ‘harm’ done if a contract that is not compliant gets signed is small and checking100% of all contracts, is therefore unnecessary * IE & PRG has already monitored for compliance and been able to express opinions. Once informed, utilities are responsible for final decisions and should be able to move forward based on their view of the risks of ignoring that input. * Delay in launching programs, even if there are no protests (e.g., there is a 30 days comment period no matter what. Therefore, this approach would add 30 days *minimum* to the process). * Potential greater delay if Energy Division gets backlogged with ALs. * Potential added cost of contracting process and possible additional CPUC staff needed to process. * PA’s are responsible for delivering on performance and should be able to contract for work since compliance and transparency are already sufficiently checked during the IE & PRG process. * No stakeholder has documented compliance issues in prior EE solicitations even though there has been significant activity over the last decades. * Runs counter to an intent of adopting the rolling portfolio – to simplify and keep roles and responsibilities in the right place. Currently, EE contracts are not approved by the CPUC and this would now make that a responsibility of the CPUC. |
| 2. Only contracts that are in dispute after IE review/EE-PRG discussion or are above a certain threshold require an Advice Letter (e.g., time length or budget) | * Provides an opportunity for stakeholders to raise additional concerns if the contracts are not aligning with the business plans for contracts above a certain threshold or disputed within the EE-PRG. * Stakeholder process should reduce party protests, or at least expedite the protest period (no need for extensive data requests) although there could be delays at the commission. This is true for all the options? * CPUC approval reduces PA and uncertainty about contracts. * Requiring only disputed contracts or contracts above a certain threshold will help manage the time delays for contracts and reduce the burden on the Energy Division. * Narrowing the scope will reduce the overall cost of the IE/EE-PRG process. | * Some stakeholders would not be comfortable with only a portion of contracts being submitted, especially if the IE is only spot checking certain contracts (as noted above) because xxxx???. * Many of the ‘con’ bullets above are applicable here, but to a lesser extent since the AL are only on some sub-set. |
| 3. Existing process where contracts can move forward once PRG has reviewed the RFPs, bids, scoring and contracts | * Allows for speedier process * Already existing practice * Stakeholder process should reduce party protests * [We believe – so needs confirmation] In the prior two options which require some level of AL approval, any changes to the contracts would mean they have to go back through the AL process which will add to the existing burden on the approval process. | * Opportunity for commenting after the PRG process, is only through filing a motion after the PRG process is complete. * Creates market uncertainty for contracts that are contested by parties, but the implementer community finds the risk of potential contests better than the certain delay caused by the AL process. |

1. **Draft order of operations**

**Table 4: Roles and Responsibilities to Ensure Compliance with Existing Policies**

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
|  | **Develop RFP scope (pre-IE/EE-PRG process) and provide public review** | **PRG/IE Reviews RFP** | **Launch solicitation** | **Review Proposals** | **Present final scoring and summary analysis** | **Contract negotiation and signature OR Advice Letter** |
| PA | Write scope for RFP which is pulled from the Business Plan and expanded as possible (This will help ensure consistency between the BP and the RFP. This document becomes high level initial “IP.”  This initial information is presented to the appropriate CAEECC subcommittee. | PA incorporates any feedback from public review and develops the full RFP for IE/EE-PRG review.  Examples include:   * Full RFP scope language * Scoring criteria/weight * List for distributing RFPs (e.g., PEPMA, industry associations, others?) * Schedule commitment * Planned “Bidders Conference” | Once EE-PRG/IE review is complete and any incongruities resolved, PA launches the RFP and holds “Bidders Conference.” | PA receives proposals and scores them according to the scoring criteria. | PA presents selected offers to PRG/IE, including any justification for selection outside of strict scoring ranks. | Once review is complete and any complance items raised are resolved, PA negotiates a contract with the winning bidder.  OR if there are issues that cannot be resolved, contract [or set of them] is sent through as an AL. |
|  | **Develop and review public RFP scope** | **PRG/IE Reviews RFP** | **Launch solicitation** | **Review Proposals** | **Present final scoring** | **Contract negotiation and signature OR Advice Letter** |
| IE | n/a | Reviews the PA’s proposed 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 the business plans. | n/a | IE determines whether the solicitation was conducted fairly and ensures scoring is consistent with criteria. | IE evaluates those offers not selected.  IE provides report summarizing statistics (see below) and any recommendations.  Report includes an analysis of the proposals and submits to EE-PRG: #, size of company, adherence to schedule and compliance with policies/BP, etc.; makes recs for improvements | IE summarizes aggregate results of contract negotiation process: How many make it from selection to final; how many hit the schedule; are there themes/issues that could be improved upon?  IE would also report on why some offers were selected and some were not. |
| EE-PRG | n/a | Reviews proposed RFP protocol and the recommendation of IE. Raises any issues or if none, the process moves along. | n/a | n/a | Either the EE-PRG brings up concerns based on IE report OR if no items of contention, the process continues. |  |

1. D.16-10-019 p.# [↑](#footnote-ref-1)
2. It will be necessary to ensure Intervenor Compensation direction is clear for participation in this process. [↑](#footnote-ref-2)
3. Policy Manual v.5 p.# [↑](#footnote-ref-3)