**California Energy Efficiency Coordinating Committee**

Coordinating Committee Working Group Meeting

February 16, 2018 9:00am to 1:00pm

Pacific Energy Center: 851 Howard b/n 4th and 5th Streets, San Francisco

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

**Session 2: Negotiable Terms (Workforce Qualifications and Quality Installation Requirements)**

*\*\*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\*\**

1. Workforce Qualifications and Quality Installation Requirements. At all times during the performance of the Work, Contractor shall be in compliance with, and shall cause its employees, agents, representatives, and subcontractors and all other persons performing the Work on behalf of the Contractor (“Contractor Party”) to be in compliance with, the following workforce qualifications, certifications, standards and requirements:

[To be discussed. As part of its bid, each Contractor bidder will be required to propose applicable workforce standards for each sector and/or program that would reduce the risk of lost energy savings from poor installation of energy efficiency measures. This includes identifying all applicable workforce installer standards, including any specific skills certification requirements and broader occupational training and experience requirements.

The following table outlines examples of potential skills certifications and experience requirements. These examples are based on current Company Program requirements and market research. Third parties may propose additional skills certifications and experience requirements to address the risk of lost energy savings from poor installation of energy efficiency measures in their program proposals.

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| **Area of Work** | **Organization** | **Skills Certification or Experience Requirement** |
| Commissioning\* | AABC | Certified Commissioning Authority |
| ASHRAE | Certified Building Commissioning Professional |
| BCxA | Certified Building Professionals  |
| Energy Management\* | AEE | Certified Energy Manager |
| HVAC | N/A | Experienced journeymen |
| N/A | Apprentices currently enrolled in or having completed a federal of California state apprenticeship program |
| ACCA | Quality Standards Training  |
| BPI | AC and Heat Pump, Heating Professional  |
| Industrial Refrigeration | RETA | Certified Refrigeration Energy Specialist  |
| Lighting | CALCTP | Certified Installer Contractor, Acceptance Technician |
| NALMCO | Certified Lighting Management Consultant, Certified Lighting Controls Professional, Certified Apprentice Lighting Technician, Certified Senior Lighting Technician |
| NCQLP | Lighting Certified  |
| Non-Residential Audits\* | ASHRAE | Building Energy Assessment Professional |
| AEE | Certified Energy Auditor |
| Residential  | BPI | Air Leakage Controller Installer |
| Building Analyst |
| Crew Leader |
| Energy Auditor Certification |
| Envelope Professional |
| Infiltration and Duct Leakage |
| Manufactured Housing |
| Multifamily Building Analyst |
| Multifamily Building Operator |
| Quality Control Inspector |
| Retrofit Installer Technician |
| \*These skills certifications are recognized by the Department of Energy as aligned with the Better Buildings Workforce Guidelines, and have received qualified accreditation by the American National Standards Institute, International Accreditation Service, or other qualified accreditation bodies who are in compliance with ISO/IEC 17024:2012. |

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Prior to the commencement of Work, and periodically once per [*month/quarter/year*], and at any other time as may be requested by Company, Contractor shall provide all written documentation necessary to demonstrate its compliance with this Section [\_\_\_].

1. Quality Assurance. Contractor shall follow the following quality assurance procedures:

[To be discussed. As part of its bid, each Contractor bidder will be required to develop quality assurance procedures that ensure projects and measures installed under the Program perform to minimum qualifications.   The quality assurance procedures should ensure the Program is in compliance with all regulatory and legal requirements.  Industry best practices should be leveraged when appropriate with a focus on measure functionality, customer satisfaction and ensuring that energy savings are realized.  The quality assurance procedures shall ensure compliance and include detective controls.]

1. Audit Rights and Inspection. Upon demand, Contractor shall, and shall cause the Contractor Parties to, make available to Company and/or the CPUC copies of all records and supporting documentation pertaining to the performance of the Agreement or the Work, during normal business hours, and to allow reasonable access in order to interview any employee, agent or representative thereof who reasonably have information related to such records. All Work performed by or on behalf of Contractor or any Contactor Party shall be subject to inspection of Company and/or the CPUC at all times, but such right of inspection of the Work shall not relieve Contractor of responsibility for the proper performance of the Work, nor shall such inspection waive Company’s right to reject the Work at a later date.

**Session 3: Negotiable Terms (Other Negotiable Topics)**

1. **Progress and Evaluation Metrics**
2. Implementation Plan. Contractor shall perform the Work in accordance and consistent with the Implementation Plan. The Parties shall use good faith efforts to finalize an Implementation Plan within 60 days following the Effective Date of this Agreement. Such final Implementation Plan shall only be effective upon the written approval of both Parties. Contactor shall not be permitted to, nor shall Contractor permit or allow a Contractor Party to, commence Work prior to the Parties agreement upon such final Implementation Plan, and Company shall not be obligated to make any payment to Contractor under this Agreement prior to the Parties agreement upon such final Implementation Plan.

[To be discussed. As part of its bid, each Contractor shall propose and develop an Implementation Plan and include key program implementation milestones and deliverables.]

1. Key Performance Indicators (KPIs). The Key Performance Indicators (KPIs) for the Program are attached hereto as Schedule [\_\_\_]. Company shall from time to time, but no less frequently than once per [month/quarter/year], review the Contractor’s performance in achieving each KPI. Contractor agrees that failure to achieve one or more KPIs shall be an Event of Default of Contactor under this Agreement and that Company shall have all rights and remedies available to Company in law and in equity, and as may be provided in this Agreement, including without limitation the termination rights set forth in Section [\_\_\_] and modification or reduction of Program funding as set forth in Section [\_\_\_].

[To be discussed. KPIs will be the primary means of assessing the Program’s performance on an ongoing basis. Contractor shall provide KPIs as metrics to measure performance management. KPIs may be tracked on a monthly or quarterly basis. A KPI score (multiplier \* score) will be developed on a quarterly basis. KPI categories may include the following categories, among others:

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| **KPI Category** | **Description** | **Metric Definition** | **Metric Range** | **Tracking Frequency** |
| Program Performance | Energy Savings, Schedule Adherence, Cost Management and Engineering Quality | TBD | TBD | [monthly / quarterly] |
| Implementer Administrative Performance | Invoicing and Billing Accuracy, Communication and Engagement with IOU, Program Data Quality | TBD | TBD | [monthly / quarterly] |
| Marketing Performance | Email Marketing Performance, Web Experience Performance, Social Media Performance | TBD | TBD | [monthly / quarterly] |
| Customer Satisfaction | Customer Satisfaction Feedback Survey Results, Compliant Rate | TBD | TBD | [monthly / quarterly] |
| Safety Performance | Completeness of Health & Safety Policies, OSHA Reporting Timeliness, Total Safety Incident Rate | TBD | TBD | [monthly / quarterly] |
| Diversity | Highlights financial performance with diverse businesses | TBD | TBD | [monthly / quarterly] |
| Sustainability | Examines the Contractor against environmental and sustainability practices and metrics. | TBD | TBD | [monthly / quarterly] |

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1. **Contract Term/Length.**

The Agreement shall commence as of the Effective Date and shall be in full force and effect through <insert date>, unless terminated earlier or extended in accordance with the terms of this Agreement. Notwithstanding the expiration or termination of the Agreement, the provisions of this Agreement which by their nature are intended to survive such expiration or termination, including without limitation Sections [\_\_], shall continue as a valid and enforceable obligation of the applicable party.

1. **Payment Schedule and Terms**
2. Payment Terms. [To be discussed. The following table outlines major contract component categories with associated payment schedules and payment terms, if applicable. Contractor shall specify as part of their program proposal their proposed allocation of the percentage of the total contract amount among the contract payment categories. The following is a list of some potential contract payment categories. Note that the list is not intended to exhaustive, and other or different payment categories may be proposed in the filing and/or in specific agreements, as negotiated by the parties thereto.
	1. Program Launch and Administration: This contract payment category is available as an upfront payment upon contract execution for program launch and administration activities (limited to 25% max of total contract amount)
	2. Deemed: This contract payment category is defined by the applicable ruleset for Deemed energy savings with payments based upon successful completion of program implementation milestones tied to completed and verified project installations.
	3. Custom: This contract payment category is defined by the applicable ruleset for Custom energy savings with payments split between Pre-installation customer commitments and Post-installation Measurement and Verification (M&V).
	4. Meter-Based: This contract payment category is defined by the Meter-Based energy savings platform with all payments tied to post-installation meter verification at predetermined measurement intervals.
	5. True-Up and Security: The contract may include true-up and security deposit requirements to ensure performance by the Contractor.

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| **Contract Payment Category** | **Contract %** | **Customer Incentive %** | **Payment Terms** |
| Program Launch and Administration | Upfront Payment (A) | 0% - 25% | N/A | N/A |
| Deemed | Milestone Payments tied to Installations(B) | 0% - 100% | % of (B) | (B) x 50% | for 50% of completed and verified installs |
| (B) x 25% | for 75% of completed and verified installs |
| (B) x 25% | for 100% of completed and verified installs |
| Custom | Milestone Payments tied to Post-Install M&V(C ) | 0% - 100% | % of (C) | (C ) x 35% | payable upon pre-install customer commitment |
| (C ) x 65% | payable upon successful post-install M&V |
| Meter-based | Post Installation M&V (D ) | 0% - 100% | % of (D) | (D) x 50% | for measurement interval 1 | (X) months post installation |
| (D) x 50% | for measurement interval 2 | (Y) months post installation |
| **Contract Total (T) = A + B + C + D** | **100%** |  |

1. Modification of Funding. To the maximum extent permitted by applicable law, Company shall have the right to modify, reduce or increase any or all of, or any portion of, the funding allocated to the Program under this Agreement at any time, at its sole reasonable discretion, which reasonable discretion shall include (a) reductions due to excess expenditures incurred during previous Program periods, (b) carrying over unused Program funds during a Program period to the funding of the following Program period, (c) shifting Program funds among budget categories, (d) shifting Program funds to or from another program, (e) reductions due to either the unavailability of funds or Contractor obtaining a different funding source for all or any portion of the Program, or (f) reductions due to any breach or default of Contractor under this Agreement or any termination of all or any portion of this Agreement.
2. **Measurement and Verification Requirements, including Guidelines about Normalized Metered Energy Consumption (NMEC) Design Requirements.**
3. Contractor shall only enroll customers that qualify for program services. Contractor shall report customer participation information to Company in an agreed-upon format and on an agreed-upon schedule.
4. Contractor shall comply with current policies, procedures, and other required documentation as required by Company.
5. During the course of Work being performed, Company may identify new energy savings estimates, net-to-gross ratios, effective useful lives, or other values that may alter Program Energy Savings. Implementer shall use modified values upon Company’s request, provided Company modifies Implementer’s Program budget and/or overall Program Energy Savings consistent with the requested change. Company will determine any budget increases in its sole discretion. Any and all compliance obligations relating to emissions of greenhouse gases or avoidance of emissions of greenhouse gases relating to the implementation shall remain with the entity or entities responsible for such compliance.
6. Contractor shall work with Company’s evaluation team to define program-specific data collection and evaluability requirements, and in the case of normalized metered energy consumption (NMEC), which independent variables shall be normalized.
7. For programs claiming to-code savings, contractor shall work with Company to address elements in their program designs, such as:
	1. Identifying where to-code savings potential resides;
	2. Specifying which equipment types, building types, geographical locations, and/or customer segments promise cost-effective to-code savings;
	3. Describing the barriers that prevent code-compliant equipment replacements;
	4. Explaining why natural turnover is not occurring within certain markets or for certain technologies; and
	5. Detailing the program interventions that would effectively accelerate equipment turnover.
8. **Coordination with Other Program Administrators**

As part of its bid, each bidding Contractor will propose how they will coordinate with all applicable energy efficiency program administrators when implementing the Program in areas where there is geographic overlap among program administrators.

1. **Data Collection and Ownership Requirements**
2. Requirements for Data Collection.
3. Company Data shall mean: All data or information provided by or on behalf of Company, including but not limited to, personally identifiable information relating to, of, or concerning, or provided by or on behalf of any customers; all data or information input, transferred, uploaded, migrated, or otherwise sent by or on behalf of Company to Contractor as Company may approve of in advance and in writing (in each instance); account numbers, forecasts, and other similar information disclosed to or otherwise made available to Implementer by or on behalf of Company and Customers; and all data provided by Company’s licensors, including any and all survey responses, feedback, and reports, as well as information entered by IOU, Contractor or Subcontractor, and Participating Customers through the Program.
4. Before receiving any Company Data, Contractor shall complete Company’s Vendor Security Review process. Contractor may receive Company data if Contractor receives a satisfactory risk rating from Company at the conclusion of Company’s Vendor Security Review process. If Contractor receives an unsatisfactory risk rating from Company, Contractor may not receive Company Data until such time Implementer receives a satisfactory risk rating.
5. Contractor shall take “Security Measures” with the handling of Confidential Information to ensure that the Confidential Information will not be compromised and shall be kept secure. Security Measures shall mean industry standards and techniques, physical and logical, including but not limited to: written policies regarding information security, disaster recovery, third-party assurance auditing, penetration testing; password protected workstations at Contractor’s premises, any premises where Work or services are being performed and any premises of any person who has access to such Confidential Information; encryption of Confidential Information, and measures to safeguard against the unauthorized access, destruction, use, alteration or disclosure of any such Confidential Information including, but not limited to, restriction of physical access to such data and information, implementation of logical access controls, sanitization or destruction of media, including hard drives, and establishment of an information security program that at all times is in compliance with the industry requirements of ISO 27001.
6. Contractor shall comply with security policies relating to the handling of Confidential Information. Prior to Company’s first transfer of Confidential Information to Contractor, Contractor shall provide Contractor with documentation satisfactory to Contractor that it has undertaken Security Measures. Contractor and Company agree to meet periodically, if requested by Company, to evaluate Contractor's Security Measures and to discuss, in good faith, means by which the Parties can enhance such protection, if necessary.
7. Contractor shall update its Security Measures, including procedures, practices, policies and controls so as to keep current with industry standards, including but not limited to NIST and NERC/CIP, as applicable.
8. Company reserves the right to perform onsite security assessments to verify the implementation and ongoing operation and maintenance of security controls. At least annually, Contractor shall assist Company in obtaining a copy of any report that documents Contractor's Security Measures.
9. In the event Company determines Contractor has not complied with Security Measures, Company shall provide written notice to Contractor describing the deficiencies. Contractor shall then have sixty (60) calendar days to cure. If Contractor has not cured the deficiencies within sixty (60) calendar days, Company may cancel this Contract for cause in accordance with the Terms and Conditions of the Contract.
10. Contractor shall immediately notify IOU in writing of any unauthorized access or disclosure of Confidential Information and/or IOU Data. Contractor shall take reasonable measures within its control to immediately stop the unauthorized access or disclosure of Confidential Information and/or IOU Data to prevent recurrence and to return to IOU any copies.
11. Ownership of Work Product. Any and all material and information prepared, accumulated or developed by Contractor or any Contractor Party (“Program Intellectual Property”), including, without limitation, documents, drawings, computer programs, designs, calculations, maps, plans, workplans, text, filings, estimates, manifests, certificates, books, specifications, sketches, notes, reports, summaries, analyses, data models and samples, including summaries, extracts, analyses and preliminary or draft materials developed in connection therewith, shall be jointly owned by the Company and Utility Participants, if any, on behalf of their respective customers. Contractor hereby grants Company and the Utility Participants an irrevocable, assignable, non-exclusive, perpetual, worldwide, royalty-free, unrestricted license to use and sublicense others to use, any intellectual or proprietary property right of Contractor or any Contractor Party for the sole purpose of using such Program Intellectual Property for the conduct of Company’s business related thereto.

All such Work Product shall be used by Contractor and Contractor Parties only for Work performed pursuant to this Agreement and shall not be used in Contractor’s general course of business, nor disclosed nor revealed in any way to a third party without the prior written consent of Company.

1. Billing, Energy Use, and Program Tracking Data. Contractor shall comply with and timely cooperate with all CPUC directives, activities and requests regarding the Program and Project evaluation, measurement and verification (EM&V). Company shall not pay incremental costs associated with such CPUC requests.

Contractor shall make available to Company upon demand, full program descriptions, and detailed descriptions of data tracking systems, baseline conditions, and detailed participant data including financial assistance amounts.

Contractor shall also make available to Company any revisions to Contractor’s program theory and logic model (PTLM), the results of its Quality Assurance Plan, and comply with all data reporting requirements, including progress and evaluation metrics.

1. Access to Customer Sites. Contractor shall be responsible for obtaining any and all access rights from customers and other third parties to the extent necessary to perform the Work. Contractor shall also procure any and all access rights from Contractor Parties, customers and other third parties in order for Company and CPUC to inspect the Work as provided in this Agreement.