



SOLICITATIONS WORKING GROUP MEETING 7/26/22

Agenda

1. New Member Engagement Structures
2. ED's 3P Solicitations Process Improvements Staff Proposal and ALJ Ruling Seeking Comments: R. 13-11-005
3. Discuss Key Questions & Answers in ALJ Ruling (for Council Response)

Meeting Notes

1. New Member Engagement Structures

- During the Spring 2022 Council Board Meeting, Board Members and Staff discussed the opportunity to streamline existing Member Working Groups (MWGs) to ensure content and participation are as useful, impactful, timely, and relevant to Members and Staff as possible. This will help the Council leverage its existing resources more efficiently and effectively, maximizing Members' benefits. Some specifics are still being refined. The following changes will take place over the coming months:
- Sunset most current MWGs **in their current structure**, this includes the C/E MWG.
- **Redevelop sunseting MWGs into three Topic Committees** (which are standing committees to meet with a consistent cadence):
 - o Energy Efficiency & Decarb Committee (EEDC): To focus on all matters related to energy efficiency (EE) and ongoing efforts to decarbonize the economy. This Topic Committee will also address (among other issues): cost-effectiveness, solicitations, custom review, EM&V, and NMEC, as those issues arise.
 - o Demand Response, Distributed Energy Resources, & Resilience Committee (DDRC): To focus on all matters related to DR, DERs, and resilience. This Topic Committee will also address (among other issues): cost-effectiveness, DR and Investor-Owned Utilities (IOUs), Emergency Load Reduction Program (ELRP), California Energy Commission and CAISO DR off-market efforts (generally), Distribution System Operators (DSOs), Load Modifying Resources (LMRs), EM&V, and progress related to the Energy Division's recent White Paper.
 - o Strategic Initiatives Committee (SIC): To focus on all matters related to technology, data access, data security, financing/investments, markets, and industry evolution. This Topic Committee will also address (among other issues): cost-effectiveness, medium-to-long-term evolutions in the clean

- energy technology industry, program administration, relevant legislation and policy strategy, and industry growth opportunities.
- Empower Topic Committees to establish “Task Forces” (TFs) as needed.
- Next steps:

Week of July 18: Cancel all MWGs starting in August, except for the following:

- **August 3:** Capitol MWG to be held as scheduled.
- **August 15:** Cost-Effectiveness - revamp to be an “all-hands MWG” ad-hoc meeting to discuss relevant and timely issues to all Members.
- **August 17:** Capitol MWG to be held as scheduled.

Week of August 22: Update participants/Members re: new MWGs and Topic Committees.

Early September: Initiate new MWGs, Topic Committees and cadence.

Note: Staff will call ad-hoc meetings during this transition period if an issue arises that requires time and experience-specific member engagement.

2. ED’s 3P Solicitations Process Improvements Staff Proposal and ALJ Ruling Seeking Comments: R. 13-11-005

- On July 15 the CPUC published an [ED Staff Proposal](#) in docket R. 13-11-005 responding to stakeholder feedback re: two-stage solicitation process, evaluation and selection processes, and the contract negotiations and terms.
- The ALJ also issued a [ruling](#) seeking comments on five topics:
 - a. Potential improvements to the third-party solicitation process;
 - b. Governance and reform of two of the CPUC’s EE database tools:
 - i. The Cost Effectiveness Tool (CET); and
 - ii. The California Energy Data and Reporting System (CEDARS);
 - c. Strategic Energy Management (SEM) program issues;
 - d. The CA Analysis Tool for Locational Energy Assessment (CATALENA) project; and
 - e. Data sharing for CPUC-authorized EE programs
- Stakeholder Concerns:
 - Contract terms require the Implementer to bear a greater share of risk than they did prior to EE decisions stating a preference for P4P.
 - The risk to Implementers is stifling innovative design since untried innovations can carry greater uncertainty.
- CPUC Staff Proposal includes:
 - Greater consistency re: additional performance assurances may be required of the Implementer. IOU assess case-by-case.
 - Insurance requirements to be developed by parties based on SOW.
 - Identified challenges with up-front capital and P4P for small and/or DBEs
 - Identified DBE opportunity to serve as subcontractors re: cashflow/P4P
 - Provide consistent requirements and clarify per process one or two stage
 - Noted overwhelming stakeholder support fo clear feedback to bidders
 - Ruling hopes to put forward a decision with an effective date before 2024.

3. Discuss Key Questions & Answers in ALJ Ruling (for Council Response)

- The Council and Solicitations MWG discussed the following questions/issues. Questions that are struck through will not be addressed in the Council's response, questions that do not have an answer or are not listed were not answered during this discussion.
- The Council will continue engagement with Solicitations members who participated during the 7/26 call on building out the Council's full response.

~~3.1.1.1 What is the burden or impact of requiring upfront payment or collateral to the bidder and Implementer?~~

- *This is an unreasonable burden since participants are taking a risk, particularly inequitable for smaller and disadvantaged businesses.*
- *Collateral affects all entities' profit margins. The burden is present and significant regardless of business size.*

~~3.1.1.2 What is the benefit of requiring upfront payment or collateral to the utility or ratepayers?~~

~~3.1.1.3 Do parties support striking the final sentence to the "performance assurance; bonding" Term?~~

- *Yes.*

~~3.1.1.4 If not, why, and are there amendments to the term and condition that you would support?~~

~~3.1.1.5 Do parties support a 3% upper limit to performance assurances required, when justification that a performance assurance is necessary is provided? If not, explain. Please also propose an alternative that would allow greater consistency across utilities and ease ability for small companies with limited cashflow to bid and contract with utilities.~~

- *Eliminate performance assurance requirements.*

~~3.1.1.6 Are there legal issues relevant to changing the current rules? Explain.~~

3.1.2.1 What upfront disclosure of the types of insurance and coverage amounts required for each insurance type should the IOUs make during the solicitation process?

- *There are business practices that should be employed, but requirements must be reasonable. Is this an issue where implementers put together a bid, didn't have a clear understanding of what insurance requirements would be? There essentially should not be unlimited requirements.*
- *Charlie: Yes. That has happened.*

3.1.2.2 When in the solicitation process should the IOUs disclose their insurance requirements and why?

- *Upfront and early, in the RFA process. Or early in single-stage RFP.*

3.1.2.3 Should the IOUs be required to justify how the insurance type is relevant to the anticipated scope of work for programs resulting from the solicitation? Why or why not?

- *There have been instances where there were ridiculous limits set to security insurance. Cost 10s of thousands. In certain cases a waiver was possible.*

- Yes.

3.1.2.4 Do parties support the staff proposal for contracts with insurance requirements tailored to their specific scope of work? Why or why not?

- Yes. *No discussion provided for “why”.*

3.1.2.5 Are there insurance types that are especially costly or present other challenges for Implementers to attain? Provide specifics on the challenge that attaining the coverage presents, and any recommendations you propose CPUC consider to mitigate this challenge.

- N/A

3.1.2.6 In what circumstances is it appropriate for an Implementer to hold professional liability insurance, cybersecurity insurance, employee dishonesty insurance, and/or pollution insurance?

- *This work generally doesn't handle significantly sensitive or significantly large amounts of sensitive data (re: cybersecurity). **Generally holding professional liability insurance is appropriate, but there must be reasonable limits to the liability.***
- *There are general points to be made here across the issue. Due to CPUC process they thought they were improving the process, however, result has taken things out of EE entitie's hands and turned it into a procurement “check box with often unreasonable demands. It turns solicitations away from searching for industry experts to who is willing to accept the most risk and most demanding terms. To resolve this, generally limits and specificity to terms and requirements will be helpful.*
- *Consider - what is reasonable? How are other jurisdictions addressing these issues. there is no where else in the nation where these onerous t&c are asked.*
- *Ask CPUC to ask IOUs to list ten biggest exposure losses in the last 20 years due to efficiency programs. What standards and expectations are associated with actual documented losses. There would be value in grounding what is on the table here.*

3.1.2.7 Are there specific program scopes of work for which certain types of insurance should not be required?

3.2.1.1 Are there changes to these modifiable RFP instructions for Payment Terms and Table 2 that would improve the number and diversity of businesses bidding for contracts? If so, provide specific changes you propose.

3.2.1.2 Would it be appropriate for an Implementer pay cash or a letter of credit (i.e. a “performance security” to a utility) such that Utility and ratepayers have confidence the Implementer will complete the contracted scope of work and meet performance requirements within? Explain what circumstances might or might not merit such an arrangement.

- *No, this is highly inappropriate. P4P or progress payments are sufficient in this situation.*

- *General comment: need a ramp rate rather than diving into issue at a sprint. In terms and conditions - allow for that ramp rate.*

3.2.1.3 Should all language on performance security be removed from this Section and Table 2?

Why or why not?

3.2.1.4 If an IOU does collect against a performance security, should collected funds offset

recovery of funds from ratepayers or be added to the PAs budget for their energy efficiency portfolio? Why?

3.2.1.5 Would certain payment terms or structures that allow for businesses that require early payment to have working capital on hand to implement their programs (e.g. milestone or deliverable based payment arrangements; higher performance payments for early performance

milestones)? What are such terms or structures and why would they help bidders?

- *N/A*

3.2.1.6 Now that the EE portfolio is segmented and utilizing the TSB metric, should the stated preference for pay-for-performance based on verified savings be amended to be based on verified TSB for the Resource Acquisition segment?

- *Cannot answer this question as these matters don't become effective until 2024.*

3.2.1.7 Should performance payments be tied to a CPUC preferred metric for programs in the

Equity and Market Support segments, or should the appropriate performance metric pertinent to the scope of work be left to contracting parties to negotiate?

- *Not necessarily appropriate to align p4p and equity/market segment matters. Let this be negotiated among the contracting parties.*

3.2.1.8 Are there sectors, segments, or program types for which it is inappropriate to use a pay-for-performance structure? Why?

- *Depends on a case by case basis. What are performance indicators for amorphous requirements? P4p doesn't work across all options. To be negotiated in contracting process.*

Next Meeting

Please participate in the scheduled August 15 “all-hands MWG” ad-hoc meeting. This will be a great opportunity to continue pertinent and timely discussions. Look out for more information within the next steps schedule outlined above.