

## CA Efficiency & Demand Council Proposed Topics for CAEECC Discussion – IOU Responses

### **1) Challenge: Incorporating Cost Effectiveness Tool (CET) analysis in RFP, when DEER Resolution E-4952 may require some significant updates to the CET.**

**Problem:** DEER Resolution E-4952 proposes some substantial changes to NTG that would be effective upon adoption (set for October 11, 2018). The DEER database and workpapers would need to be updated for the CET to reflect those changes; if that is not done ahead of RFPs, third parties will not have an updated CET available for their submissions. How do the PAs intend to manage this transition during the solicitations?

**IOU Response:** the CET is managed by the Energy Division, and Energy Division is currently working to incorporate updates adopted through Resolution E-4952. The IOUs encourage bidders to use best available information, but note that the CET will not be required until the RFP stage, which should be after the updates are done. However, in the event that there is a delay in the update, the existing CET should be leveraged by the bidder community.

### **3) Challenge: Undisclosed limitations and criteria that will be applied in the RFA or RFP process.**

The RFA and RFP process is to be based on selection criteria defined by CPUC decisions and directives. For instance, maximizing cost-effectiveness is one criterion. Improving access in disadvantaged communities is another criterion. There are, at the same time, additional constraints that the PAs have added in terms of the types of implementation strategies that they are willing to contract for; some of these we have heard of and can kind of anticipate (SCE's midstream program?), but more concerning are any that we have not heard of more explicitly. These limitations seem to be revealing themselves inconsistently across ad hoc CAEECC meetings, solicitation trainings, and in implementer-PA conversations. To ensure a fair bidding process – and for the PRG and IEs to properly do their jobs in reviewing the work of the PAs – the Council wants to ensure these criteria are transparently noticed and publicized in the RFA or RFP, if not before when possible.

Possible examples include:

- a. Measures that are ineligible to promote due to overlap with current or other IOU-administered programs (SCE Midstream);
- b. Certain and differing TRC program thresholds, while not required under CPUC, are being asked of implementers (existing and for future opportunities);
- c. Direct facilitation of energy code enforcement services.

**IOU Response:** The IOUs are working diligently to clearly lay out the solicitation requirements in the RFAs/RFPs that will be issued. Through writing clear RFAs/RFPs, the IOUs do not intend and have not planned for areas of measures or approaches to be off-limits to bidders. However, the IOUs are balancing existing programs that are not due to sunset prior to the launch of the third-party programs, State and CPUC requirements that the IOUs have to meet, or if a solicitation might cause potential overlap with a yet to be defined statewide programs, those details would be clearly delineated in every relevant RFA and RFP. The scopes of work and the RFA/RFP documents are undergoing a thorough review by the Procurement Review Groups and Independent Evaluators, who are aware of this issue and making sure any ineligible product or approach is scrutinized and all information is clearly provided to bidders in the solicitation documents. In addition, the IOUs will be hosting bidder's conferences for each RFA to ensure that bidders are informed and have an opportunity to ask questions like this to the solicitation teams

**4) Challenge: Unclear Intellectual Property protection during the RFA and RFP review process.**

**Problem:** The PAs have provided assurances that they will not share sensitive bidder information with other bidders or even with other PAs. The Council greatly appreciates this position.

We also recognize there are instances where the PAs themselves have decided to push forward with internally developed and implemented programs. How can bidders be assured that sensitive information that they submit in response to an RFA or RFP will not be shared with PA staff developing similar products or programs? Similarly, would it be appropriate for PA staff developing internal solutions (program implementation staff) to be excluded from the review of bids for programs that might directly compete with a PA's internally developed solutions?

**IOU Response:** The IOUs take Intellectual Property protection very seriously and are fully committed to keeping bidder proposals confidential before, during, and after the two-stage solicitation process has concluded. In addition, the IOUs are no longer in the position of being the primary program designer, they have an obligation to dedicate a minimum of 60 percent of their portfolios to third-party proposed, designed, and delivered programs. Therefore, there would not be an opportunity for the IOUs to incorporate items from the solicitations into their own programs and meet these compliance requirements. The IOUs expect to need to justify any in-house implementation; it would be difficult for an IOU to justify implementing an offering that was substantially similar to a rejected proposal. Last, there is explicit language in the RFA/RFP and eventual contract that outlines the legal obligations around intellectual property that protects bidders from such an occurrence and provides an opportunity for recourse in the unlikely event there has been a breach. The IOUs will be hosting bidder's conferences for each RFA to ensure that bidders are informed of these steps to protect intellectual property and have an opportunity to ask questions like this to the solicitation teams.

Note: Challenge #2 raised by the Council (below) will be discussed at the 12/6 CAEECC with ED, and was not addressed by the IOUs here.

**Challenge: The Energy Division's September 14, 2018 email "clarification" regarding third party definition and competitive solicitations seems to allow, without limit, sole sourcing for third party programs.**