

Energy Efficiency Procurement Review Group and Independent Evaluator Handbook

Energy Efficiency Third Party Solicitations

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Energy Efficiency Procurement Review Group Charter

Background

In August 2016, the California Public Utilities Commission (“Commission” or “CPUC”) adopted Decision (D.) 16-08-019 which defined a “third-party program” as a program proposed, designed, implemented, and delivered by non-utility personnel under contract to a utility program administrator.¹ D.16-08-019 also defined statewide programs as program delivered uniformly through the four investor-owned utility (IOU) territories, overseen by a single lead program administrator, and designed and delivered by one or more statewide implementers.² In January 2018, the Commission adopted D.18-01-004 directing the IOUs to ensure that their Energy Efficiency (EE) portfolios contain third-party designed and implemented programs with the following minimum percentages by the dates given:

- a. At least 25 percent by December 19, 2019³. For 2018 only, the percentage requirement may also include third party programs under the definition of third party previously in place prior to the adoption of Decision 16-08-019;
- b. At least 40 percent by December 31, 2020;
- c. At least 60 percent by December 31, 2022.⁴

D.18-01-004 also authorized the IOUs to establish a EE Procurement Review Group (EE PRG) to advise the IOUs on solicitations for EE programs.⁵ Although EE PRG membership will likely overlap among the IOUs, each IOU will maintain its own EE PRG(s).⁶ To facilitate consistency to the extent possible in soliciting and selecting PRG member organizations, the IOUs coordinated to develop the following standard PRG materials, referenced and attached in Exhibit A:

- Non-Disclosure Agreement (NDA)
- Conflict of Interest Form
- Questionnaire

The purpose of this charter is to establish the EE PRGs’ objective and scope of review, eligibility and intervenor compensation requirements, and roles and responsibilities, described throughout this section of the document. As the EE PRG/IE approach is new, this handbook will be revisited after the conclusion of the first full solicitation and contracting process to determine whether adjustments to scope, roles and responsibilities, or other components of this document are needed based on lessons learned.

Objective

EE PRG participation is voluntary and serves as a vehicle for mutual education and narrowing disputes between IOUs and their EE PRG members. EE PRGs ensure proper informal⁷ oversight and transparency

¹ D.16-08-019, Ordering Paragraph (OP) 10.

² D.16-08-019, OP 5.

³ D.18.05.041, OP 4

⁴ D.18-01-004

⁵ D.18-01-004, OP4, Conclusion of Law (COL) 11.

⁶ D.18-01-004, OP 3.

⁷ Whereas CPUC provides formal oversight,

for IOU procurement by providing timely feedback on IOU procurement materials and decisions. The Commission structured EE PRGs to be advisory groups to the utilities, with representation from Commission Staff, the Public Advocates Office, the California Energy Commission, consumer representatives, and non-market participants who do not have a financial interest in the outcome of any solicitations. The EE PRGs shall advise and assist the IOUs with respect to their energy efficiency procurement.⁸ The EE PRGs balance the goals of oversight, transparency, and timely feedback with the desire to have an expeditious procurement process sufficiently aligned with Commission direction and California laws.

Scope

The expectation is that EE PRGs are to be involved and provide timely input throughout the following stages of the procurement process:

- Review of Solicitation Strategy, Materials & Activities (Pre-RFA/RFP Release)
- Launch solicitation
- Review Abstracts/Proposals
- Present final Shortlist/Scoring
- Contracting
- All stages of solicitation from solicitation strategy, through the solicitation and including negotiation and final contracting.

IOUs give the EE PRGs opportunity to review and provide timely input to the following:⁹

- Any IOU revisions to solicitation strategy (i.e. scope, schedule, and competitive vs. sole source) within the IOUs overall procurement plan as laid out in IOUs business plan, ensuring alignment of the strategy with commission decisions
- Bid process flowchart, milestones, timelines, communication plans (both with the EE PRG and the broader bidder community)
- Choice of proposed Independent Evaluators (IEs)
- Draft Request for Abstract (RFA) and scoring criteria review, including criteria weighting
- RFA bids received if EE PRG members so choose
- Rationale behind scoring and ranking, RFA shortlist and related rationale for shortlisting
- Draft Request for Proposals (RFPs) and scoring criteria review, including criteria weighting
- Rationale behind scoring and ranking, RFP shortlist and selected contractor and related rationale for shortlisting and selection
- Review independent evaluator (IE) evaluations of all solicitations, including incorporation of EE PRG feedback, from proposed RFA design through contract signing
- Provide feedback to IOUs throughout the process

⁸ D.18-01-004, p. 35.

⁹ D.18-01-004, p. 36.

While the EE PRGs are provided an opportunity to review as well, the following provides general scope for which the IE is ultimately responsible for review, providing input to IOU, and reporting to PRG any IOU response action to IE input:

- Structure and composition of the scoring committee
- Scoring, ranking, and related rationale of RFA and RFP bids received, shortlisting, and selection
- Final contracts with selected contractors, including but not limited to savings goals, pay for performance provisions, and workforce standards

Eligibility

All EE PRG members must be non-financially interested parties, as defined in D.05-01-055:

“A financially interested party is any person who engages in the purchase, sale or be [sic] marketing of energy efficiency products or services, or who is employed by a private, municipal, state or federal entity that engages in the purchase, sale or marketing of energy efficiency products or services, or who provides consulting services regarding the purchase, sale or marketing of energy efficiency products or services, or an employee of a trade association comprised of entities that engage in the purchase, sale or marketing or (sic) energy efficiency products or services

Energy efficiency services include among other things, performing energy audits and advising clients and potential customers about potential energy savings they can achieve, but does not include evaluating, measuring and verifying the installation and/or results of energy efficiency products or services, or research to develop new energy efficiency products or services.”

The procurement review group for energy efficiency third party procurement is made up of members of non-financially-interested parties, including Commission staff and the Public Advocates Office, California Energy Commission, with membership approved by the Director of the Commission’s Energy Division.¹⁰

Intervenor Compensation

EE PRG participants will be eligible for compensation in accordance with the Commission’s intervenor compensation program.¹¹ Parties interested in claiming intervenor compensation are encouraged to read the Commission’s “Intervenor Compensation Program Guide” and must submit all required documents to the Commission for review.¹²

¹⁰ D.18-01-004, OP 3.

¹¹ D.18-01-004, Finding of Fact (FOF) 11, COL 11.

¹² These materials are available on the CPUC’s website at <http://www.cpuc.ca.gov/icomp/>

Table 1: Roles & Responsibilities

The key stakeholders involved in the EE PRG process are the IOUs, EE PRG members, and IEs. The primary roles and responsibilities for each of these parties as they relate to the EE PRG process are indicated in table below.

	EE PRG Meetings & Expectations	Review of Solicitation Strategy, Materials & Activities (Pre-RFA/RFP Release)	Launch solicitation	Review Abstracts/Proposals	Present final Shortlist/Scoring	Advice Letter ¹³	Contracting
IOUs	<p>Notice: The IOUs will notice all meetings at least three business days in advance, which will include call in numbers for all participants.</p> <p>Agenda: The IOUs will distribute an agenda and meeting materials at least 48 hours in advance of each EE PRG meeting.</p> <p>Meeting Materials: If meeting materials are extensive, the IOUs will make every attempt to give additional advance time to review the materials, needed review time is determined after consultation with the EE PRG members.</p> <p>Facilitation: The IOUs will administer and facilitate EE PRG meetings.</p> <p>Meeting Notes: The IOUs will distribute meeting notes to EE PRG participants within one week of the meeting conclusion or before the next scheduled meeting, whichever comes first.</p>	<p>Provides overview of solicitation strategy (i.e. scope, schedule, and competitive vs. sole source) within broader context of the IOUs overall procurement plan as laid out in IOUs business plan, illuminating if any revisions to strategy have been made.</p> <p>Proposes IEs for each solicitation, for EE PRG review and recommendations. Assigns IEs.</p> <p>Ensures solicitation evaluation and scoring teams are staffed appropriately and provide subject matter expertise for each solicitation. Develops RFA/RFP package for IE/EE PRG review, including but not limited to:</p> <ul style="list-style-type: none"> Context for the solicitation: other similar programs, complimentary programs historically & going forward Anticipated number of awarded contracts and budget (floor, ceiling, range) Details on required content of RFA/RFP bid package Draft scoring criteria and weights Other details that make the evaluation/decision-making process transparent and unbiased Draft communication and outreach plan including solicitation distribution lists and public posting of materials (CAEECC, PEPMA, IOU websites) 	<p>Ensures all PRG & IE recommendations have been considered and included to the greatest extent possible prior to launch.</p> <p>Execute communication and outreach plan to attract a large and diverse bid pool to bring new and innovative program designs for cost effective energy efficiency.</p> <p>IOU launches the RFA/RFP.</p> <p>IOU assigns IOU members to scoring committee.</p>	<p>IOU receives proposals, reviews presentations of bidders as needed, and scores proposals according to the scoring criteria, including specific rationale for each bid.</p> <p>IOU and IE discuss/resolve any IE recommendations prior to presentation to the EE PRG.</p> <p>IOU also records items raised by IE and subsequent resolution or disagreement after attempts to resolve any differences to be included in presentation to EE PRG.</p>	<p>IOU presents selected offers to EE PRG, including rationale for all bids consistent with current process as well as any justification for selection outside of strict scoring ranks.</p> <p>(As noted below, the IE is present at all EE PRG meetings)</p>	<p><i>IOUS file a Tier 2 AL for contract awards:</i></p> <ul style="list-style-type: none"> Valued at \$5 million or greater and/or Contract term of longer than three years 	<p><i>IOUs will develop SOW and contract and award, consistent with chosen RFP proposals and State/Commission statutes, policies, guidance, and business plans.</i></p> <p><i>IOUs provide access to final contract to IEs and EE PRG as requested.</i></p> <p><i>Contracts shall follow best practices and process in place.</i></p> <p><i>IOUs will work with IEs in contracting practices and present to EE PRG</i></p> <p><i>IOUs will make every effort to negotiate and execute contract in timely and fair manner.</i></p>

¹³ Per D.18.01.004 OP2. Advice letter filing triggers additional role not included in this Roles and Responsibilities matrix of Commission staff when disposing of advice letter and parties in exercising option to protest or respond to advice letter.

		<ul style="list-style-type: none"> Draft solicitation timeline to include sufficient details regarding: (a) how it interacts with all solicitations (both within the IOU and across IOUs), (b) what are the specific items that will occur within the next 6 months for this solicitation (i.e., update the example milestones with dates and sufficient details), and (c) identify specific topics from the detailed milestone document and indicate which milestones will be addressed at each scheduled EE PRG meeting. 					
IE	<p>IEs are to provide arms-length expertise evaluating the fairness of the conduct and results of the solicitation process by the IOUs.</p> <p>IE reports on all procurement processes and outcomes, from draft RFA development through contracting, shall be submitted to the members of the EE PRGs prior to finalizing any stage.</p> <p>IEs will serve as a consultant to the EE PRGs, participating in all meetings of EE PRG to which they are assigned and provide additional analyses requested by the PRG.</p> <p>IEs shall also provide assessments of the overall procurement process, including:</p> <ul style="list-style-type: none"> report on findings and recommendations at the end of solicitation process¹⁴; 	<p>Reviews and provides timely input and recommendations to the IOU's RFA/RFP package (refer to IOU row for contents of packages).</p> <p>Reviews the structure and composition of the scoring committee.</p> <p>Ensures consistency with State of California and Commission statutes, policies, guidance, and business plans.</p>	<p>Review RFAs issued and communication and outreach plan to ensure follow through on agreed upon input in review stage</p> <p>Reviews draft materials for pre-bid meeting (scheduled Bidders' Conference) with potential bidders, provides timely feedback to the IOUs.</p> <p>Observes Bidders' Conference meetings and materials.</p>	<p>Reviews third-party responses to RFAs/RFPs.</p> <p>Observes presentations of bidders as needed, ranking sessions, and evaluation process.</p> <p>Provides independent scoring of proposals.</p> <p>IE determines whether the IOU conducted the solicitation fairly and ensures scoring is consistent with criteria.</p> <p>IE records items they raised to IOUs and subsequent resolution or disagreement after attempts to resolve any differences. IEs present this to EE PRG.</p>	<p>IE is present at all EE PRG meetings.</p> <p>Provides analysis of process and results as required in D.18-01-004.</p> <p>Provide standardized reports and summaries to the IOUs and EE PRGs.</p>	<p>Per D.18-01-004, IEs review all proposals from original RFA through contract and prepare standardized reports and summaries to the IOUs and EE PRGs.</p> <p>For contracts valued at \$5 million or greater and/or with a contract term of longer than three years, the IE's report must be attached to the advice letter filing.</p>	<p>IEs should monitor the entire process from RFA design to contract execution, for all solicitations and contracts.</p> <p>In reports to the EE PRG and final report to the Commission, IEs provide analysis of the consistency of contracts with the awarded RFP and State/Commission statutes, policies, Commission guidance, and business plans.</p>

¹⁴ D.18-01-004 p, 37.

	<ul style="list-style-type: none"> Report on the overall process and conduct of the third-party solicitations on at least a semi-annual basis.¹⁵ 						
EE PRG	<p>EE PRG members are able to choose which solicitations they will participate in</p> <p>For chosen solicitations, EE PRG members must commit to serving on the EE PRG until the end of the full process for those solicitations, attend meetings to the extent possible, and faithfully review meeting materials providing timely input</p> <p>EE PRGs are advisory groups and do not have decision-making authority</p> <p>EE PRGs will be consulted at all stages of solicitation</p> <p>EE PRG individual members may choose to join and participate on an active solicitation, at any time, but may not delay solicitation schedule or revisit prior PRG advice provided to IOU.</p>	<p>Reviews selected IE for each solicitation and provides recommendations, as needed.</p> <p>Reviews each sector-or segment-specific solicitation plan and any IOU revisions to solicitation strategy to ensure alignment of the strategy with commission decisions.</p> <p>Reviews and provides timely input and recommendations to RFA/RFP packages (refer to IOU row for contents of packages).</p> <p>May review the structure and composition of the scoring committees.</p> <p><i>Also see Scope description on page 4</i></p>	<p>Review RFAs issued and distribution lists to ensure follow through on agreed upon input in review stage.</p> <p>Review assessment by IE and provide input, as applicable.</p>	<p>EE PRG will have the opportunity to review abstracts and proposals as desired and will provide recommendations to the IOUs as desired.</p> <p>Review assessment by IE and provide input, as applicable.</p>	<p>Review IE analyses of each solicitation process and outcome.</p> <p>The EE PRG provides recommendations to the IOUs based on IE report and/or EE PRG members' review.</p>	<p>If differences of opinion between parties continue to exist, EE PRG members can utilize the AL protest process</p>	<p>Review IE reports on contracting process</p> <p>Review final contracts, as needed</p>

¹⁵ D.18-01-004, OP 5, p. 62.

Guiding Principles: Energy Efficiency Procurement Review Group

Please consider these guiding principles as best practices, which as the members of the EE PRG and the IOU teams follow them, will lead to more efficient and effective operation and communication to and feedback from each other (IOU <-> PRG).

Principles

- (1) **Confirming participation in each solicitation.** Each EE PRG member may volunteer to participate in any solicitation; however, the member must commit to full participation in that solicitation. Members can volunteer to participate in as many solicitations as they wish for as long as they participate fully in each solicitation. A Table has been provided on page 5 as a tool for the EE PRG members to utilize in planning their participation.
- (2) **Attendance.** The Charter currently indicates that EE PRG members must commit to serving until the end of the selected solicitation (a solicitation may run across yearly milestones). Detailed schedules of the first solicitations have been provided to ensure that the EE PRG members understand the required time and resource commitments. While participation is voluntary, it is imperative that members give full commitment to complete the entire solicitation process through 2019 and continue to support any ongoing solicitations that began in 2019 but continue into 2020.
- (3) **Continuing Participation.** The IOUs propose to review the participation of EE PRG member on an as needed basis to ensure that the EE PRGs support the solicitation process as directed by the Commission. The next scheduled time frame to revisit EE PRG membership is set for the third quarter of 2019. If it appears there is insufficient ability of the EE PRG members to be present on all solicitations prior to the new solicitation anticipated for 2020, the IOUs – in consultation with the EE PRG members – may put out a request for additional EE PRG members. Any such members would only be eligible to enter at the beginning of a new solicitation process.
- (4) **Solicitation of New EE PRG Members and Confirmation of Continued Participation for 2020.** After consulting with their respective EE PRGs, the IOUs may conduct a solicitation for new EE PRG members for 2020 and obtain confirmation of continued participation of the existing EE PRG members before the end of 2019. Any EE PRG member who does not demonstrate a commitment to the process as evidenced by a low-level of participation in 2018-2019, may result in non-participation the following year.

Frequently Asked Questions

Frequently asked questions are intended to serve as a quick reference, and not the master guiding information IOUs/PRGs/IEs consult for background, objective, scope, eligibility, intervenor compensation or roles and responsibilities. One must refer to the information above and controlling commission decisions and precedents for the ultimate answer.

EE PRG, IE & IOU Engagement & Activities

Question 1 - What specifically will the IE do in parallel to IOUs?

Answer - IEs will be actively be involved in IOU solicitations by doing the following:

- a. Provide feedback to the IOU on draft solicitation materials (RFA/RFP), and ensure alignment with respect to Commission rules, and other regulated compliance related matters which includes but is not limited to, California law, Commission policy, approved Business Plan and Solicitation decision requirements
- b. Play an active role by reviewing procurement materials, processes, and all bids
- c. Consistently participating in scoring conversations
- d. Provide input during scoring
- e. Independently score bids
- f. Keep a record of all solicitation activities, including through contracting, in preparation for solicitation reporting to EE PRGs & CPUC

Question 2 - What will the IOUs provide IE/EE PRG?

Answer – To ensure transparency, IOUs will provide a copy of the following:

- a. Draft RFA – including criteria and weighting
- b. Draft RFP – including criteria and weighting
- c. Detailed scoring criteria, materials, milestones, timelines, and other relevant information for each stage

Question 3 – What will the IE do and provide to the EE PRG?

Answer - IEs will provide and/or disclose the following to participating EE PRGs for the respective solicitation:

- a. Identify any policy (non-compliance), ethical, or conflict-of-interest issues that arise in the course of the process
- b. Assist the EE PRGs in their review of IOU proposals and processes
- c. Assess and confirm that the final RFA/RFP criteria and weighting integrate EE PRG comments
- d. Provide an assessment of the scoring process and outcomes. The assessment includes, but is not limited to, the following examples below.
 - How robust the conversation was regarding balancing different scorer rankings, responsiveness to IE questions, etc.
 - The robustness and range of scoring among evaluators

- Evaluate the caliber of bids (e.g., in 2007-2009, Public Advocates Office and NRDC observed the bids were often scored low, making it hard for the EE PRG to justify contracting).
 - If scoring is low, determine if it's the bids or the scoring, lack of clarity of required contents in RFA/RFP or a combination and determine next steps for improving the quality of bids.
- e. Provide an explanation of disagreements or unresolved issues from the scoring team, noting where scores diverged significantly.
 - f. Analyze and provide a final report of the entire solicitation process and outcomes.
 - g. Provide ad hoc analyses and reports to the EE PRG as requested.

Solicitation Processes & Questions for Consideration

Question 4- What are some items that all parties should consider when playing a role in the upcoming EE Third Party Solicitations?

Answer – Below are some examples of questions you might want to consider when evaluating, reporting, or participating in discussions around the solicitations.

- Was the RFA/RFP written in a manner consistent with the Commission's guidance for third-party programs and relevant State of California and Commission laws, policies, and guidance?
 - Does the RFA/RFP conform to the IOUs' approved business plan, including approved procurement plan, as authorized by the Commission?
 - How does the RFA/RFP fit within an IOU's total portfolio?
 - Was the RFA/RFP written in neutral manner that does not favor a particular implementer or delivery approach?
 - Was the RFA/RFP influenced by prior communication with implementers? If so, was this influence helpful (i.e., technical clarifications) or unethical (i.e., introducing a bias in favor of certain firms or certain technologies)?
-
- Did the solicitation process allow bidders sufficient time to respond with quality bids?
 - Was there sufficient time for clarifying questions and responses?
 - Was there adequate time for smaller firms (with fewer staff) to prepare bids?

Attachment B

- Non-Disclosure Agreement (NDA)
- Conflict of Interest Form
- Questionnaire

**ENERGY EFFICIENCY PROCUREMENT REVIEW GROUP
NON-DISCLOSURE AGREEMENT
REGARDING PROTECTED MATERIALS**

between

[UTILITY]

and

[EE PRG MEMBER]

This Energy Efficiency Procurement Review Group Non-Disclosure Agreement (the “Agreement”) dated as of the Effective Date is hereby entered into by and between Southern California Edison Company, a California corporation (“IOU”), and **[EE PRG Member]**, a **[Legal Status of EE PRG Member]** (“EE PRG Member”). IOU and EE PRG Member shall sometimes be referred to in this Agreement individually as a “Party” and jointly as the “Parties”.

RECITALS

- A. IOU may from time to time disclose Protected Materials (as defined below) to IOU’s statewide energy efficiency procurement review group, established pursuant to California Public Utilities Commission (“Commission”) Decision (D.) 18-01-004 (the “EE PRG”).
- B. EE PRG Member seeks to participate in the EE PRG. IOU desires that any Protected Material that may be provided by it or on its behalf to an Authorized Reviewer (as defined below) will be kept confidential by such Authorized Reviewer.
- C. The Parties seek to create a single universal confidentiality agreement that will: (i) be applicable to all EE PRG correspondence, communication, and access to and use of Protected Materials; and (ii) constitute an agreement to serve on the EE PRG as described in D.18-01-004.

AGREEMENT

NOW, THEREFORE, the Parties agree as follows:

- 1. Definitions. For the purpose of this Agreement and in addition to the terms defined and capitalized in other sections of this Agreement, the following terms shall have the following meanings:
 - (a) “Authorized Reviewer(s)” means: (i) the EE PRG Member if EE PRG Member is a Non-Financially Interested Party; or (ii) a Reviewing Representative of EE PRG Member who is a Non-Financially Interested Party, who has executed a Non-Disclosure Certificate, and who has been approved by the IOU in accordance with Section 7 of this Agreement. If EE PRG Member has Staff that are also Unauthorized Staff, EE PRG Member is not an Authorized Reviewer unless EE PRG Member complies with Section 6 of this Agreement.

- (b) “Authorized Staff” means Staff that are not Unauthorized Staff.
- (c) “Commission Staff” means any person employed by or working on behalf of the Commission.
- (d) “Financially Interested Party” means any person or entity, or employee of an entity, that engages in the purchase, sale or be marketing of energy efficiency products or services, or who is employed by a private, municipal, state or federal entity that engages in the purchase, sale or marketing of energy efficiency products or services, or who provides consulting services regarding the purchase, sale or marketing of energy efficiency products or services, or an employee of a trade association comprised of entities that engage in the purchase, sale or marketing of energy efficiency products or services, as described in Commission Decision 05-01-055, related Commission Decisions and subsequent Commission Decisions addressing the EE PRG or by any successor proceeding addressing the EE PRG.
- (e) “Non-Disclosure Certificate” means a certificate executed by a Reviewing Representative substantially in the form of Appendix A.
- (f) “Non-Financially Interested Party” means an entity that is not a Financially Interested Party. The California Independent System Operator is deemed a Non-Financially Interested Party for purposes of this Agreement.
- (g) “Protected Materials” means: (i) trade secret, market sensitive, or other confidential and/or proprietary information as determined by IOU in accordance with the provisions of Decision (“D.”) 06-06-066 and subsequent decisions, including D. 17-09-023, General Order 66-D, Public Utilities Code section 454.5(g), or any other right of confidentiality provided by law or regulation; or (ii) any other materials that are designated as confidential or market sensitive information by the IOU, the Commission, any state or federal agency, or any state or federal court having appropriate authority. Protected Materials also include memoranda, handwritten notes, spreadsheets, computer files and reports, and any other form of information (including information in electronic form) that copies, discloses, incorporates, includes or compiles other Protected Materials or from which such materials may be derived (except that any derivative materials must be separately shown to be confidential). Protected Materials do not include: (x) any information or document contained in the public files of the Commission or any other state or federal agency, or in any state or federal court; or (y) any information that is public knowledge, or which becomes public knowledge, other than through disclosure in violation of this Agreement or any other non-disclosure agreement or protective order.
- (h) “Redacted” or “Redact” or “Redactions” means situations in which Protected Materials in a document, whether the document is in paper or electronic form, have been covered, blocked out, or removed.
- (i) “Reviewing Representative” means those persons designated in accordance with Section 7 and who meet the following criteria:
 - (i) Reviewing Representatives may not currently be engaged in: (1) a transaction for the purchase, sale, or marketing of energy efficiency

products or services (or the direct supervision of any employee(s) engagement in such a transaction); (2) the bidding on or purchasing of energy efficiency technology (or the direct supervision of any employee(s) engagement in such a transaction); or (3) knowingly providing energy efficiency consulting or advisory services to others in connection with a transaction for the purchase, sale, or marketing of energy efficiency products or services or the bidding on or purchasing of energy efficiency technology (or the direct supervision of any employee(s) engagement in such a transaction or consulting).

- (ii) Reviewing Representatives may not be an employee, subcontractor, or independent contractor of a Financially Interested Party. If the EE PRG Member chooses to retain outside attorneys, consultants, or experts that also have in the same law firm or consulting firm attorneys, consultants, employees, staff or experts that provide advice to, or otherwise work with or for, a Financially Interested Party, then the attorney, consultant, or expert serving as a Reviewing Representative must be separated by an ethics wall, consistent with the ethics wall requirements of the kind used by law firms to manage conflict-of-interest situations among different clients, from all other attorneys, consultants, employees, staff or experts that provide advice to, or otherwise work with or for, a Financially Interested Party.
- (iii) Reviewing Representatives shall use Protected Materials only for the purpose of participating in the Commission proceeding in which they received the information.
- (iv) Reviewing Representatives are permitted to participate in regulatory proceedings on behalf of Financially Interested Parties and Non-Financially Interested Parties.
- (v) All Reviewing Representatives are required to execute the Non-Disclosure Certificate attached to this Agreement and are bound by the terms of this Agreement.
- (j) “Staff” means employees, staff, advisors, independent contractors, or subcontractors of EE PRG Member.
- (k) “Unauthorized Staff” means Staff that are also consultants to or employees, staff, advisors, authorized agents, independent contractors, or subcontractors of, a Financially Interested Party.

2. Access to Protected Materials and Use of Protected Materials. Subject to the terms of this Agreement, Authorized Reviewers shall be entitled to access any Protected Materials and may make copies of Protected Materials, but such copies become Protected Materials. Authorized Reviewers may make notes of Protected Materials, which shall be treated as Protected Materials if such notes disclose any Protected Materials. Protected Materials obtained by an Authorized Reviewer may be requested by that Authorized Reviewer in a subsequent Commission proceeding, subject to the terms of any non-disclosure agreement

or protective order governing that subsequent proceeding, without constituting a violation of this Agreement.

3. Designation, Filing and Service of Protected Materials. When filing or providing in discovery any documents or items containing Protected Materials, a Party shall physically mark such documents (or in the case of non-documentary materials such as computer diskettes, on each item) as “ PROTECTED MATERIALS SUBJECT TO NON-DISCLOSURE AGREEMENT,” or with words of similar import as long as one or more of the terms, “Protected Materials” or “Non-Disclosure Agreement” is included in the designation to indicate that the materials in question are Protected Materials. All materials so designated shall be treated as Protected Materials unless and until: (a) the designation is withdrawn pursuant to Section 10 hereof; (b) an assigned administrative law judge, law and motion administrative law judge, assigned Commission commissioner, or the Commission makes a determination that: (i) the document does not contain Protected Materials or does not warrant confidential treatment; (ii) denies a motion to file the document under seal; or (iii) the document or information becomes public knowledge, other than through disclosure in violation of this Agreement or any other non-disclosure agreement or protective order. However, the IOU has the burden of showing that the documents are Protected Materials, and merely marking a document “Protected Materials” is insufficient to meet that burden.

All documents containing Protected Materials that are tendered for filing with the Commission shall be placed in sealed envelopes or otherwise appropriately protected and shall be tendered with a motion to file the document under seal pursuant to Rule 11.4 of the Commission’s Rules of Practice and Procedure. All documents containing Protected Materials that are served on parties in a proceeding shall be placed in sealed envelopes or otherwise appropriately protected and shall be endorsed to the effect that they are served under seal pursuant to this Agreement. Such documents shall only be served upon Authorized Reviewers and Commission Staff. Service upon Authorized Reviewers and Commission Staff may either be: (x) by electronic mail in accordance with the procedures adopted in this proceeding; (y) by facsimile; or (z) by overnight mail or messenger service. Whenever service of a document containing Protected Materials is made by overnight mail or messenger service, the assigned administrative law judge shall be served with such document by the same means and at the same time.

4. Redaction of Documents. Whenever an Authorized Reviewer files, serves, or provides in discovery a document that includes Protected Materials (including but not limited to briefs, testimony, exhibits, and responses to data requests), such Authorized Reviewer shall also prepare a Redacted version of such document. The Redacted version shall enable persons familiar with this proceeding to determine with reasonable certainty the nature of the data that has been Redacted and where the Redactions occurred. The Redacted version of a document to be filed shall be served on all persons on the service list, and the Redacted version of a discovery document shall be served on all persons entitled thereto.
5. Maintaining Confidentiality of Protected Materials. Each Authorized Reviewer: (a) shall treat Protected Materials as confidential in accordance with this Agreement and the Non-Disclosure Certificate; (b) shall use Protected Materials solely for the purpose of performing its obligations under this Agreement and for participating in the EE PRG and

not for any other purpose; and (c) shall not disclose Protected Materials in any manner to any person except to Commission Staff and to an Authorized Reviewer who needs to know such information for the purposes of performing the receiving party's obligations under this Agreement. Each Authorized Reviewer agrees to implement and maintain reasonable security procedures and practices appropriate to the nature of the Protected Materials, including, but not limited to, complying with industry standard security requirements, to protect the Protected Materials from unauthorized access, destruction, use, modification, or disclosure, and to prohibit the use of the Protected Materials for a secondary commercial purpose. Each Authorized Reviewer shall promptly notify IOU of any unauthorized disclosure or use of the Protected Materials.

Authorized Reviewers shall be liable for any unauthorized disclosure or use by itself and/or its employees, paralegal, or administrative staff. In the event an Authorized Reviewer is requested or required by applicable laws or regulations, or in the course of administrative or judicial proceedings (in response to oral questions, interrogatories, requests for information or documents, subpoena, civil investigative demand or similar process) to disclose any of Protected Materials, the Authorized Reviewer shall immediately inform IOU of the request, and IOU may, at its sole discretion and cost, direct any challenge or defense against the disclosure requirement, and the Authorized Reviewer shall cooperate in good faith with IOU either to oppose the disclosure of the Protected Materials consistent with applicable law, or to obtain confidential treatment of the Protected Materials by the person or entity who wishes to receive them prior to any such disclosure. If there are multiple requests for substantially similar Protected Materials in the same case or proceeding where an Authorized Reviewer has been ordered to produce certain specific Protected Materials, the Authorized Reviewer may, upon request for substantially similar materials by another person or entity, respond in a manner consistent with that order to those substantially similar requests.

6. Additional EE PRG Member Requirements. If EE PRG Member has Staff that are also Unauthorized Staff, then EE PRG Member is not an Authorized Reviewer unless: (a) EE PRG Member provides written notice to IOU identifying such Unauthorized Staff; (b) EE PRG Member establishes policies and procedures necessary to create an ethics wall separating Authorized Staff from Unauthorized Staff consistent with the ethics wall requirements of the kind used by law firms to manage conflict-of-interest situations among different clients; (c) EE PRG Member provides documentation to IOU evidencing, to IOU's reasonable satisfaction, EE PRG Member's implementation and establishment of such policies and procedures required to comply with Section 6(b) above; and (d) Protected Material is only disclosed to Authorized Staff on a need-to-know basis and only for the purpose of participating in the EE PRG.
7. Designation and Approval of Reviewing Representatives. EE PRG Member shall provide written notice identifying its proposed Reviewing Representative(s) to the IOU. The written notice shall include the information identified in this Section. Within fifteen (15) business days after receiving written notice of the identity of any proposed Reviewing Representative, the IOU may provide the EE PRG Member with a written request for additional information, a written objection to a specific proposed Reviewing Representative stating the grounds for the objection, or a written approval of a specific proposed Reviewing Representative; provided, if IOU provides the EE PRG Member with

a written request for additional information, then IOU will be afforded a reasonable amount of additional time to provide a written objection to or a written approval of such proposed Reviewing Representative.

EE PRG Member may not provide any Protected Materials to proposed Reviewing Representative(s) until the IOU provides written approval of the Reviewing Representative and only if such Reviewing Representative is an Authorized Reviewer.

Any dispute concerning whether an identified person or entity is an appropriate Reviewing Representative shall be resolved through the dispute resolution procedures in this Agreement. Failure by the IOU to object within fifteen (15) business days, or a previously issued written approval provided by the IOU does not waive the IOU's right to later object to the Reviewing Representative, even if Protected Materials has already been disclosed. However, further disclosure of Protected Materials would be stayed until the parties are able to resolve the dispute consistent with the dispute resolution procedures set forth herein.

Reviewing Representative(s) have a duty to disclose to the IOU any potential conflict that puts the Reviewing Representative in violation of D.05-01-055, related Commission Decisions and subsequent Commission Decisions addressing EE PRG or by any successor proceeding addressing the EE PRG. A resume or curriculum vitae is reasonable disclosure of such potential conflicts, and should be the default evidence provided in most cases.

8. Non-Disclosure Certificates. A Reviewing Representative shall not inspect, receive, participate in discussions regarding, or otherwise be granted access to, Protected Materials unless and until the Reviewing Representative is an Authorized Reviewer, which includes a requirement that such Reviewing Representative must first complete and execute a Non-Disclosure Certificate, attached hereto as Appendix A, and deliver the signed Non-Disclosure Certificate to the IOU.
9. Ownership and Return or Destruction of, and Termination of Access to, Protected Materials. All Protected Materials shall be and remain the property of the IOU. Nothing in this Agreement shall be construed as granting any rights in or to Protected Materials to the Authorized Reviewer receiving it, except the right of use in accordance with the terms of this Agreement.

If the IOU requests in writing that an Authorized Reviewer returns or destroys Protected Materials, the Authorized Reviewer shall, within fifteen (15) days after such request: (a) return Protected Materials to the IOU or destroy the Protected Materials; and (b) submit to the IOU an affidavit stating that, to the best of its knowledge, all Protected Materials have been returned or destroyed. To the extent Protected Materials are not returned or destroyed, such Protected Materials shall remain subject to this Agreement.

In the event that: (a) a Reviewing Representative to whom Protected Materials are disclosed ceases to be engaged in providing services to the EE PRG Member; (b) a Reviewing Representative becomes a Financially Interested Party; (c) an EE PRG Member becomes a Financially Interested Party; or (d) an EE PRG Member or Reviewing Representative is no longer an Authorized Reviewer, then access to Protected Materials by that person or entity shall be terminated and the EE PRG Member or Reviewing

Representative, as applicable, shall immediately return or destroy all Protected Materials to the IOU with written notice explaining the reason for the return or destruction of such Protected Materials. Even if EE PRG Member or a Reviewing Representative is no longer an Authorized Reviewer or even if a Reviewing Representative is no longer engaged in this proceeding, every such person shall continue to be bound by the provisions of this Agreement and the Non-Disclosure Certificate.

10. Withdrawal of Designation. The IOU may determine at any time to remove the “Protected Materials” designation from any materials if, in its opinion, confidentiality protection is no longer required. In such a case, the IOU will notify all EE PRG Members that the IOU has withdrawn its designation of Protected Materials for specific documents or material.
11. Other Objections to Use or Disclosure. Nothing in this Agreement shall be construed as limiting the right of a Party to object to the use or disclosure of Protected Materials on any legal ground, including relevance or privilege. Nothing in this Agreement is intended to waive any attorney-client, work-product or other privilege applicable to any statement, document, communication, or other material of a Party or the Parties.
12. Notice. Any notice or communication given pursuant to this Agreement shall be in writing and:
 - (a) Delivered personally, in which case delivery is given upon written acknowledgment of receipt;
 - (b) Mailed by registered or certified mail; postage prepaid, in which case delivery is given on the earlier of the actual date of delivery, as set forth in the return receipt, or three (3) days from the date posted, or
 - (c) Delivery by facsimile, in which case delivery is given upon actual receipt of the entire document.

In any of these cases, the writing shall be sent or delivered as follows (subject to change by either Party by notifying the other Party pursuant to this paragraph).

If to IOU: [UTILITY]
 [ADDRESS]

Attn: [NAME]

Cc: [NAMES]

If to EE PRG Member:

 [Name of EE PRG Member]
 [Address of EE PRG Member]
Telephone: [Number]
Facsimile: [Number]

12. Dispute Resolution.

All disputes that arise under this Agreement, including but not limited to alleged violations of this Agreement and disputes concerning whether materials were properly designated as Protected Materials, shall first be addressed by the Parties through a meet and confer process in an attempt to resolve such disputes. If the meet and confer process is unsuccessful, either Party may present the dispute for resolution to the Commission and may pursue all other remedies available in law or equity.

13. Remedies. The Parties agree that any violation of this Agreement shall constitute a violation of an order of the Commission and that irreparable damage would occur if this Agreement were not performed in accordance with its terms or were otherwise breached. Notwithstanding the foregoing, a Party may be entitled to seek an injunction or injunctions to prevent breach of this Agreement and to enforce specifically its provisions in any court of competent jurisdiction, in addition to any other remedy to which such Party may be entitled by law or equity in the event of an actual or anticipated disclosure of Protected Materials.
14. Choice of Law. This Agreement shall be interpreted, governed and construed under the laws of the State of California (without giving effect to its conflict of laws provisions that could apply to the law of another jurisdiction) as if executed in and to be wholly performed within the State of California.
15. Modification. This Agreement may not be modified or terminated except by a written agreement executed by both Parties or by order of the Commission. The Parties agree that modifications to this Agreement may become necessary, and they further agree to work cooperatively to devise and implement such modifications in as timely a manner as possible. Each Party governed by this Agreement has the right to seek modifications in it as appropriate from the Commission.
16. Waiver. Any waiver of the requirements and provisions of this Agreement shall be in writing. The failure of either Party to enforce at any time any of the provisions of the Agreement or to require at any time performance by the other Party of any of such provisions, shall in no way be construed as a waiver of such provision or a relinquishment of the right thereafter to enforce such provision.
17. Interpretation. Headings are for convenience only and may not be used to restrict the scope of this Agreement. This Agreement shall be interpreted in accordance with the plain meaning of its terms and not strictly for or against any of the Parties hereto. This Agreement shall be construed as if each Party was its author and each Party hereby adopts the language of this Agreement as if it were its own.
18. Enforceability. If any provision hereof is unenforceable or invalid, it shall be given effect to the extent it may be enforceable or valid, and such enforceability or invalidity shall not affect the enforceability or invalidity of any other provision of this Agreement.
19. Effective Date. This Agreement shall be deemed effective as of the date upon which the last Party executes this Agreement (the "Effective Date").
20. Authority. The signatories hereto represent that they have been duly authorized to enter into this Agreement on behalf of the Party for whom they sign.
21. Counterparts, Electronic Signatures. This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original of this Agreement and all of

which, when taken together, will be deemed to constitute one and the same agreement. The exchange of copies of this Agreement and of signature pages by facsimile transmission or by other electronic means shall constitute effective execution and delivery of this Agreement as to the Parties and may be used in lieu of the original Agreement for all purposes. Signatures of the parties transmitted by facsimile or by other electronic means shall be deemed to be their original signatures for all purposes.

[Signature Pages Follow]

IN WITNESS WHEREOF, the Parties have read this Agreement, understand it, and agree to be bound by its terms as of the Effective Date.

[EE PRG MEMBER],

[UTILITY],

a California corporation

a [Legal Status]

By:

By:

Name:

Name: _____

Title:

Title: _____

Date: _____

Date: _____

APPENDIX A TO AGREEMENT

NON-DISCLOSURE CERTIFICATE

I hereby certify my understanding that access to Protected Materials is provided to me pursuant to the terms and restrictions of that certain Energy Efficiency Procurement Review Group Non-Disclosure Agreement Regarding Protected Materials between *[EE PRG Member]* and *[Utility]* effective as of April [], 2018 (the "Agreement"), that I have been given a copy of and have read the Agreement, that I am not a Financially Interested Party, and that I agree to be bound by the Agreement as if I am a Party to the Agreement. I understand that the contents of the Protected Materials, any notes or other memoranda, or any other form of information that copies or discloses Protected Materials shall not be disclosed to anyone other than in accordance with the Agreement. I acknowledge that a violation of this certificate constitutes a violation of an order of the California Public Utilities Commission.

Signed: _____

Name _____

Title: _____

Organization: _____

Dated: _____

ENERGY EFFICIENCY PROCUREMENT REVIEW GROUP

DECLARATION REGARDING CONFLICT OF INTEREST

I, [NAME], declare:

1. I make this Declaration on behalf of myself, [NAME], in my capacity as [POSITION] of [ENTITY NAME], the entity that will be a member of the Procurement Review Group "PRG", with the (Investor Owned Utility- FULL NAME) (UTILITY ACRONYM) in this matter.
2. Pursuant to California Public Utilities Commission Decision 18-01-004 ("Decision"), (UTILITY) will utilize a Procurement Review Group "PRG", (as such term is used in the Decision) in solicitations or bilateral negotiations for energy efficiency (EE)- third-party contracts.
3. [ENTITY NAME] has submitted a proposal (the "Proposal") to (UTILITY) to act as member of the Energy Efficiency Procurement Review Group "EPRG" in future solicitations. [ENTITY NAME] agrees that it has executed this Declaration as a condition of participation in the EPRG. If selected, [ENTITY NAME] will act as a member of the EPRG in future solicitations, it, through its duly authorized representative. [ENTITY NAME] also agrees that each of its agents, employees and subcontractors who will or might perform substantive work for (UTILITY) as a member of the EPRG will also sign a duplicate original Declaration in his or her individual capacity prior to performing such work.
4. I, my family, my employees, and my business interests are not financially interested parties as defined in Decision (D.)05-01-055 with respect to any of the potential bidders (or any California Investor Owned Utility affiliate, regardless of whether or not such affiliate is a potential bidder) in future EE third-party contract solicitations or in the outcome of such future solicitation processes, except as otherwise disclosed in the completed EPRG Qualification Questionnaire attached hereto.
5. Further, I covenant that I will, upon (UTILITY)'s request, demonstrate that none of I, my family, my employees, nor my business interests are financially interested parties as defined in D.05-01-055, with respect to any of the potential bidders (or any California Investor Owned Utility affiliate, regardless of whether or not such affiliate is a potential bidder) in any future EE third-party contract solicitations, bilateral negotiations or contract amendments.
6. If at any time I become aware of any financial interest (as described in paragraph 4) in any of the potential bidders (or any California Investor Owned Utility affiliate, regardless of whether or not

Signature Page

such affiliate is a potential bidder) in a future EE third-party contract solicitation or in the outcome of such a solicitation process or in any of the potential bidders (or any California Investor Owned Utility affiliate, regardless of whether or not such affiliate is a potential bidder) or counterparty or in the outcome of the process of such future activities, I shall promptly notify (UTILITY) and the EPRG members in writing of such financial interest and (UTILITY) may remove me from the EPRG and take any other appropriate or necessary actions, including, but not limited to reporting such conflict to the California Public Utilities Commission.

7. I represent and warrant that I have read and become familiar with the Decision, particularly all sections, findings of fact, conclusions of law, and ordering paragraphs related to the formation of the EPRG (see, e.g., Section 3.4 at pp. 35-36). Consistent with the Decision, I represent, warrant and covenant that I have complied and will comply with the appropriate guidelines established by the Fair Political Practices Commission ("FPPC") concerning conflict of interest, including the guidelines as set forth under the heading "New Conflicts of Interest Regulations (June 10, 2015)" on the FPPC's website at :(<http://www.fppc.ca.gov/content/dam/fppc/NS-Documents/LegalDiv/Regulations/ConflictRegs/18700.pdf>)
8. I understand that for the duration of my participation in the PRG I shall be required to disclose any actual or potential conflict should one arise.
9. I understand that for the duration of my participation in the PRG I may be required to re-execute this Declaration upon the (UTILITY's) request.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this Declaration was executed in _____ on _____, 201__.

Name: _____

Title: _____

[Utility]

Energy Efficiency Procurement Review Group Questionnaire

1. Please identify and describe the organization that you would represent. The organization you represent must be a non-market participant who does not have a financial interest in the outcome of any Energy Efficiency solicitation.¹⁶
2. Please describe your and your organization’s experience with electric and natural gas energy efficiency activities in California.
3. Please describe your and your organization’s experience with any of the following market sectors: Residential, Commercial, Industrial, Agriculture, Public, and/or Cross-Cutting.¹⁷
4. With respect to Requests for Abstracts (“RFAs”) and Requests for Proposals (“RFPs”) involving energy efficiency, describe your and your organization’s familiarity and experience with reviewing and evaluating the program design, implementation, and contractor selection process.
5. As a PRG member, you and your organization will be expected to be involved at all stages of the solicitation process. Please affirm your availability to meet the requirements described in the “PRG Charter” form attached to this packet.
6. Do you or the organization you represent have any contractual, financial, or work-related relationship with any third-party contractor who is currently implementing or is contracted to implement energy efficiency programs in the future? If so, please explain.
7. Please indicate which of following PRGs you intend to participate in:

<input type="checkbox"/> SoCalGas	<input type="checkbox"/> SCE
<input type="checkbox"/> SDG&E	<input type="checkbox"/> Statewide
<input type="checkbox"/> PG&E	

Name: _____

Organization: _____

¹⁶ Pursuant to CPUC Decision (D.) 05-01-055 a financially interested party is “any person who engages in the purchase, sale or be [sic] marketing of energy efficiency products or services, or who is employed by a private, municipal, state or federal entity that engages in the purchase, sale or marketing of energy efficiency products or services, or who provides consulting services regarding the purchase, sale or marketing of energy efficiency products or services, or an employee of a trade association comprised of entities that engage in the purchase, sale or marketing or (sic) energy efficiency products or services.”

¹⁷ Cross-cutting sectors consist of Emerging Technologies, Codes & Standards, and Workforce Education & Training.

Address: _____

City/State/Zip: _____

Telephone Number: _____

E-Mail Address: _____