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The California Energy Efficiency Industry Council (“Council”) represents over seventy corporations whose primary functions are organized around activities that help California meet its energy and climate policy goals. In the past, our member companies have led or participated in much of the California Energy Commission (Commission) PIER research in the *Building Energy Efficiency* and *Environment and Energy* program areas. We appreciate the opportunity to provide input to the Commission’s EPIC Investment Plan.

The Council appreciates that the Commission is responsible for ensuring that public funds are used wisely and effectively. Some rules that we understand the Commission is considering in the Second Triennial EPIC Investment Plan (“Plan”) seem, however, to be counterproductive to providing the Commission with that assurance. As a representative of an industry that has (a) the technical capabilities to design, run, understand, and communicate the results of public interest energy research, (b) practical, real-world experience with building design and construction, and (c) practical, real-world experience with all aspects of energy efficiency program delivery, we offer the following observations and recommendations about the proposed EPIC processes.

1. Retain Contracting Approach for EPIC Funding

The Council believes that the Commission can optimize the impacts of the EPIC program by utilizing both grant and contract-type agreements, as appropriate to the nature of the research and expected outcomes. Our impression is that the Commission intends to administer the EPIC research program primarily or only through grants instead of contracts – and this is of great concern. It is our understanding that the reasons for pursuing this path are (1) “to better reflect the nature of” the Commission’s research agreements (per Alan Ward, November 14, 2012), and (2) to shorten the time between Notice of Award and contract execution, because the Department of General Services (DGS) reviews contracts but not grants. We believe that the minor advantages that relying entirely on grants could have are far out-weighted by the negative impacts. In fact, the assumptions underlying the reasoning that grants better reflect the nature of the Commission’s research funding, really only apply to (a) the development of technologies wherein the grantee will be able to make a profit selling the

results of the research, or (b) the grantee has other sustaining funding streams that obviate the need for profit (e.g., national labs or universities).

1.1. *For-Profit Consultants Effectively Excluded by Grant-Only Approach*

In past PIER research, for-profit firms conducted research into energy efficient system design practices that have been incorporated into Title 24 standards. These firms developed strategies and tools for designing more efficient commercial lighting and daylighting systems, residential and nonresidential envelope details, ventilation systems, and hot water systems for multifamily buildings. They have helped the Commission develop market connection strategies for air conditioning systems in hot/dry climates, and for advanced lighting systems. There are numerous other examples. These PIER research efforts have not been directed to developing proprietary products, but they have significantly advanced energy efficiency goals in California.

The Council's members doing this kind of research were able to focus on systems design and integration issues, which can be applied to classes of products by multiple manufacturers. If this kind of research were not fully supported by public funds, no researcher would have an interest in doing it, because the researchers have no financial interest in those products to compensate for lost profit and in-kind requirements. Nor would the manufacturers support this kind of public research, because it would also benefit their competitors. More to the point, if the Commission relies entirely on grants for research, we believe that for-profit firms will effectively be excluded from participating in the Commission's EPIC funded research. This would mean virtually all research would be done by manufacturers with financial interest in the research results or national labs, universities, and manufacturers' associations (e.g., GRI, EPRI). If contract mechanisms are retained, we believe EPIC program outcomes will be enhanced since for-profit contractors will be able to participate and contribute significant value, as they have in past PIER research.

1.2. *Grant-Only Approach Doesn't Guarantee Cost Savings*

Moreover, adopting rules intended to eliminate profit from public funded research offers a false economy. Every firm or organization must be able to cover its expenses plus a little more so that they are able to put together proposals, invest in staff training, and grow. Labs and universities do not have profit per se, but their fringe and expenses can be significantly higher because they have to cover the same functions. Associations and other non-profits also structure their rates so that they cover all their costs plus a reserve for training and other necessary non-billable activities. Thus, the Commission would not necessarily reduce costs by eliminating "profit." It would simply force the for-profit firms to choose between not participating at all, or working at a loss.

1.3. *Avoidance of the DGS Oversight Doesn't Justify Grant-Only Approach*

The Council understands that the second reason EPIC research may be implemented only through grants is that the contract process involves DGS review, whereas grants do not. The Commission anticipates that it will be able to shorten the time it takes to get an agreement in place by eliminating the DGS review. If a contracting process that often takes over 180 days can be shortened by eliminating a DGS review, which we understand to be statutorily limited to ten working days, is that 5% faster processing

time for grant agreements a larger advantage than the disadvantages of a grant-only approach? We don't believe so.

Given the above observations, we strongly recommend the use of contract-type agreements, in addition to grant-type agreements. To the extent that grant-type agreements are selected for a research project, we provide two additional reflections on the use of grants below.

2. To the Extent Grant Agreements are Used, Provide More Flexibility With Respect to Grant Agreement Match Funding Requirements

In cases where the research results will not produce future revenue from intellectual property or product development, we aren't clear why a contractor should be required to provide match funding. Where a researcher has no financial interest in the outcome of a research project, we see no compelling economic justification for requiring match funding.

In cases where there is a financial interest in the outcome of the research, requiring in all cases that a substantial amount of match funding be locked in at the time that bidders submit their proposals would place significant limits on both the nature of projects and the kinds of organizations that can respond. It favors the (1) national labs and universities, that often have one or more federally-funded projects about to launch or already in its earliest stages, and (2) manufacturers who have a host of product development costs which, when paid for, can correctly be labeled as match-funds. These can, of course, be good opportunities for the Commission to leverage funding. The majority of industry consultants who have previously performed PIER research for the Commission, however, do not fall into either of those categories. For many industry consultants, it would be unusual to secure a large source of co-funding for a research project coinciding ideally with an EPIC solicitation timing. Allowing additional time to secure co-funding after the Notice of Award will increase the research opportunities for the EPIC program.

We recommend that, where feasible, allowances be given to bidders that can deliver match funding, if required, after Notice of Award.

3. To the Extent Grant Agreements are Used, Reduce Administrative Burden Associated with Grant Agreements Where Possible

In principle, grants are agreements to pay a fixed amount for specific, agreed-on results rather than payment for time and materials as is the case with contracts. However, the Council notes that in many respects, the Commission administers grants as if they were contracts. In some of our members' experience, reporting on work under a PIER grant has required the same level of administrative details on hours worked, tracking of expense minutiae, and disaggregation of loaded rates as with contracts. Given the established fixed amounts in a grant agreement, we don't understand the need for extensive costing documentation.

It is appropriate for a state agency to protect the public interest from fraud, erroneous invoicing, and other waste of public funds. However, when incremental administrative requirements go beyond those goals, they simply reduce the amount of funding that could be applied to useful research. A prime example is the requirement that firms disclose the components of their fully loaded rates. Would the Commission prefer a firm with higher fully-loaded rates and a 2% profit component, to one with lower fully-loaded rates and a 10% profit component? If the Commission likes the quality of work a firm provides, and their fully loaded rates are competitive, it is hard to understand what protection is afforded the Commission in knowing the constituent elements of the firm's rates. Additionally, a team with seasoned but more expensive employees may get more done in less time, adding more total value than a less experienced team with lower bundled rates and lower raw salaries.

We strongly recommend that the Commission minimize the reporting requirements related to grant administration where possible when grant agreements are used.

Conclusion

Thank you again, for this opportunity to comment on the EPIC Second Investment Plan at this early juncture. We recommend that the Commission use the contract mechanism when appropriate, rather than only the grant mechanism for EPIC research funding, especially for building science and energy/environment focused research that is truly only in the public interest. In cases where the research products will not produce future revenue from intellectual property or product development, the contractor should not be required to provide match funding, and should be allowed to charge ordinary and reasonable profit for the work-for-hire research project. We look forward to engaging further with the Commission on these issues.

Regards,



Margie Gardner, Executive Director