

Competitive Solicitations Framework Working Group: Sub-Team 5. Pro Forma Contracts

Ruling element:

f. Development of solicitation pro forma contract(s).

Background:

Through the discussions of this sub-group, two areas of recommendations were identified; modifications to reflect solicitations aimed at distribution deferral projects and improvements to existing pro formas.

A set of pro forma contracts was offered up as a reference point for this working group’s discussions to focus on (accessible through [https://sceprprfo.accionpower.com/_scedgpr_1501/documents.asp?Col=DateDown&strFolder=a.%20RFO%20Documents/iii.%20Pro%20Forma%20Purchase%20and%20Sale%20Agreements%20\[PSAs\]/&filedown=&HideFiles=](https://sceprprfo.accionpower.com/_scedgpr_1501/documents.asp?Col=DateDown&strFolder=a.%20RFO%20Documents/iii.%20Pro%20Forma%20Purchase%20and%20Sale%20Agreements%20[PSAs]/&filedown=&HideFiles=)). These contracts are illustrative of the form of future pro forma contracts that would be developed for solicitations. The changes/recommendations identified by this sub-group are not necessarily specific to these pro forma contracts, but rather are meant to provide guidance to the development of any future contract, regardless of starting point.

Distribution deferral changes:

The potential changes are captured in the table below.

Area	Description/Thinking	Pre-Operational	Operational	Primary Sections of Distributed Generation IFOM Pro Forma	Primary Sections of Distributed Generation BTM Pro Forma	Primary Sections of Demand Response Energy Storage Pro Form
Performance based payment structure during the distribution deferral period for solar	This would take the form or a fixed payment related to performance during this period or an adjustment to energy payments which created the same effect.	N	Y	-Exhibit E, Section 1.02 (Product Payment Calculations after Commercial Operation Date) Add new payment/ payment adjustment	-Section 3.1 (Product Payment Calculations) Add new payment/ payment adjustment related to performance during	-Section 7.2(b) (Delivered Capacity Payment) and Section 7.3(b) (Delivered Energy Payment)

Area	Description/Thinking	Pre-Operational	Operational	Primary Sections of Distributed Generation IFOM Pro Forma	Primary Sections of Distributed Generation BTM Pro Forma	Primary Sections of Demand Response Energy Storage Pro Form
resources.				related to performance during targeted distribution deferral period -Exhibit J (Time of Delivery Periods and product Payment Allocation Factors)	targeted distribution deferral period -Exhibit C (Time of Delivery Periods and Product Payment Allocation Factors)	Add or modify payment/ payment adjustment related to performance during targeted distribution deferral period
There would be an increase in the number of pre-operational milestones as well as consequences for not meeting these milestones.	<p>a) Our approach would likely be that if the milestone was missed, but could be achieved in a short time and the service provider showed how this would not impact the on-line date, then the development security could increase, but there would likely not be a termination right.</p> <p>b) If the milestone could not be achieved soon and this would impact the on-line date, then a termination right would</p>	Y	N	<p>-Section 3.06(d) (Failure to Meet the Commercial Operation Deadline)</p> <p>-Section 3.16 (Progress Reporting Toward Meeting Milestone Schedule)</p> <p>-Exhibit G (Seller’s Milestone Schedule and Material Permits)</p> <p>-Section 3.06(a) (Development</p>	<p>-Section 5.2 (Seller Representations, Warranties and Covenants) New covenant to provide milestone progress reporting based on Distributed Generation IFOM Pro Forma Section 3.16 of the New milestone schedule</p> <p>-4.1(a) (Delivery Date Security Amount) Adjustment to</p>	<p>-Section 5.1 (Milestone Schedule)</p> <p>-Exhibit D (Milestone Schedule)</p> <p>-Section 9.2(a) (Credit Requirement after Effective Date) Adjustment to Delivery Date Security for</p>

Area	Description/Thinking	Pre-Operational	Operational	Primary Sections of Distributed Generation IFOM Pro Forma	Primary Sections of Distributed Generation BTM Pro Forma	Primary Sections of Demand Response Energy Storage Pro Form
	occur.			Security Amount) Adjustment to Development Security for deviation from milestone schedule that would not impact on-line date -Section 6.01(b) (Seller Events of Default) Add new Event of Default for deviation from milestone schedule that would impact on-line date	Delivery Date Security for deviation from milestone schedule that would not impact on-line date -6.1(b) (Seller Events of Default) Add new Event of Default for deviation from milestone schedule that would impact on-line date -Exhibit G (New exhibit identifying milestone schedule based on Distributed Generation IFOM Pro Forma Exhibit G)	deviation from milestone schedule that would not impact on-line date -Section 11.1 (Seller Events of Default) Add new Event of Default for deviation from milestone schedule that would impact on-line date
Development security in the agreement	need to be increased due to the critical reliance on the DER product to provide the ability to defer the need to	Y	N	-Section 3.06(a) (Development Security Amount)	-Section 4.1(a) (Delivery Date Security Amount)	-Section 9.2(a) (Credit Requirement after Effective

Area	Description/Thinking	Pre-Operational	Operational	Primary Sections of Distributed Generation IFOM Pro Forma	Primary Sections of Distributed Generation BTM Pro Forma	Primary Sections of Demand Response Energy Storage Pro Form
	build the distribution system upgrade					Date)
Performance assurance in the agreement	need to be increased due to the critical reliance on the DER product to provide the ability to defer the need to build the distribution system upgrade	N	Y	-Section 1.07 (Performance Assurance Amount)	-Section 4.2(a) (Performance Assurance Amount)	-Section 9.2(c) (Credit Requirements during Delivery Period)
The agreement would have to be modified to accommodate the voltage support product	<p>a) Some DERs (PV and energy storage) can provide voltage support up to a certain volume without impacting kWh output. Above that level, output must be reduced</p> <p>b) Other DERs have to reduce output as soon as they supply voltage support.</p>	N	Y	<p>-Section 3.01 (Conveyance of Entire Output, Conveyance of Green Attributes, Capacity Attributes and Resource Adequacy Benefits)</p> <p>-Section 3.31 (New section detailing obligations related to voltage support to be added)</p> <p>-Exhibit A, Definition of "Product"</p>	Not applicable	Not applicable

Area	Description/Thinking	Pre-Operational	Operational	Primary Sections of Distributed Generation IFOM Pro Forma	Primary Sections of Distributed Generation BTM Pro Forma	Primary Sections of Demand Response Energy Storage Pro Form
				-Exhibit E, Section 1.02 (Product Payment Calculations after Commercial Operation Date) Add new payment/ payment adjustment related to voltage support performance		

Improvements to existing pro formas:

Challenges in LCR RFO / Preferred Resource Pilot Pro Forma Contracts:

1. Lack of sufficient information available to bidders in advance
 - Led to failure to procure the minimum capacity for preferred resources
 - Procurement plan, resource performance requirements, selection criterion not developed through public, transparent process
 - Yielded process with multiple opaque determinants that made participation difficult

2. No identification of a trigger or explanation of how the utility would dispatch the resource
 - Impossible to sign up customers with a blind trigger and no market experience as to how frequently or under what conditions the resources will be dispatched and yet resource is responsible for market performance of the resource and penalties from the CAISO
 - Utility has full discretion on when the resource will be dispatched and DR Provider doesn't know until 20 minutes in advance

3. Utility changed the notification period from 1 hour to 20 minutes with no ability to negotiate and based solely on the direction of CAISO

- Section 1.6 of LCR RFO Pro Forma
 - Significant change with insufficient process
4. Sellers were responsible for all the telemetry and integration costs, which were unknown at the time of the RFO
 - Very challenging to negotiate a contract and be on the hook for things that are not understood, not defined, unknown, or subject to change during the negotiation
 5. To the extent that the utility incurred CAISO charges, the utility could pass those charges through to the Seller without identifying whether Buyer or Seller caused the penalty
 6. Sellers had to ensure resources would meet Resource Adequacy even though the RA rules were under development at the time of the RFO

Proposed Solutions:

A transparent, collaborative negotiation with Buyers and Sellers at the table would result in a more workable contract as opposed to developing a “take it or leave it” contract

Define the following in advance of conducting an auction / issuing an RFO:

- Resource attributes
- Locational requirements
- Telemetry and Integration requirements and costs
- Triggers, if not bid in directly by DR Provider. DRAM allows DR Providers to submit bids and be dispatched based upon whether the bid clears in the wholesale market. This is an advantage as there are no surprises. If a bid is selected in Day-Ahead market clearing process, DR Provider knows it has to dispatch resource the following day.